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METIS LAND RIGHTS IN ALBERTA: A POLITICAL HISTORY

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and
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By

The Metis Association of Alberta
and
Joe Sawchuk
Patricia Sawchuk
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Canada
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This work is dedicated
to the memory of Joe Dion,
Jim Brady, Malcolm Norris,
Peter Tomkins and Felix Calihoo

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PREFACE

The publication of this book is the result of almost three years of research conducted by the staff of the Land Claims Research Department of the Metis Association of Alberta. It represents an important first step for the Metis people of this province. Not only has the historical research documented and explained the early origins and contributions of the Metis to Alberta, but it also has outlined the historical background that supports our claims for aboriginal rights.

It is very important that we clear up any misunderstandings about just what aboriginal rights are, and who is entitled to them. First of all, we should be very clear about what aboriginal rights are *not*; they are not an excuse for some "free handouts" to native people, and they are not some phony claim invented to hold up progress, or to line the pockets of expensive lawyers. Nor are they simply a moral claim. Aboriginal rights are a strictly legal claim to land, based on original ownership, and it is a claim well recognized in international law, as well as British law.

It is interesting to note that the idea of denying aboriginal peoples a claim to their own land is a relatively recent development; all of the documentation reveals that from the beginning, the European countries that came to this continent recognized that the native people were the rightful owners of the land, and if they were to settle here, they had to get title to the land in a recognized legal manner.

There is also some confusion over just who is entitled to aboriginal rights, and who is not. Another fight the Metis and Non-Status Indians had to engage in recently was to convince the federal government that we too have aboriginal rights. We were able to show that there was a long history of such recognition from the British government and the Canadian government, and that we could not be ignored in any discussion of aboriginal title.

But despite the fact that we have had legal recognition of Metis aboriginal title, history shows that we were not given the compensation we were entitled to. A system of distributing land, called 'scrip' was imposed on the Metis people without their consent or without consultation with their leaders. This system operated in such a way as to ensure that the Metis would not benefit in any meaningful way from the land distribution and in fact swindled the Metis out of their birthright.

This violation has resulted in the injustice which currently finds the Half-breed, Metis and Non-Status Indians, landless in their own land, unlike the Status and Treaty Indians who at least have had some land reserved for their use. The Metis are now determined to do something about this, and to make sure their aboriginal rights are not only

recognized, but that just compensation will finally be paid. This will enable us to begin developing real programmes of economic development which will finally allow our people to enter into mainstream society on an equal footing.

Sam Sinclair,
President,
The Metis Association of Alberta.

ACKNOWLEDGEMENTS

The writing and publication of this book was made possible by grants from the Alberta Law Foundation, the Department of the Secretary of State, the Native Secretariat and Alberta Culture. To all of these we owe a debt of gratitude. Within these organizations and departments, specific individuals were very helpful in providing advice and encouragement throughout the course of the project. In particular, Karen Schwartz of the Secretary of State encouraged our initial application for funding and supported our second request, and it has been a pleasure to work with her; Zella Harris, Bill Donahue and Ron Harrison from the Native Secretariat have also been most helpful. We very much appreciate the time and concern that these people have given us and thank them for enabling us to make this book a reality.

A number of researchers worked on the Land Claims Research Project since its inception as a pilot project in 1978. Some of their work is cited in the text. In addition to the MAA researchers, there are others who were helpful in sharing information of common concern. From AMNSIS, Larry Heinemann and Ron Bourgeault deserve special mention. Doug Sprague, of the Manitoba Metis Land Commission, was most helpful in explaining various aspects of scrip issue. Gary Gould, president of NBAMNSI, provided encouragement and useful information about printing and distribution. The Aboriginal Rights Research staff of NCC supplied us with materials from the Public Archives during the initial period of research.

We would like to acknowledge the assistance of the archivists at the Provincial Archives of Alberta, the Glenbow Archives, the University of Alberta Archives, the Saskatchewan Archives Board and the Manitoba Archives. In addition to the written materials, we have also obtained a large number of photographs from these sources which appear throughout the text. The photograph of the Paul Kane painting, "Halfbreed Encampment", on the cover, is from the Royal Ontario Museum.

Two people at the Metis Association of Alberta deserve special mention for their continual support and encouragement through often trying times. These are Louise Hayes and Wilf Birse, and we are most grateful to have had the opportunity of working with them. Darlene Skoreyko, our secretary, typed the entire manuscript, which she saw through many stages and painstakingly transformed into readable copy. Kim Davis provided technical and artistic expertise. He is responsible for designing the format of the book and the cartography. Kim's optimistic outlook and his creativity have made working with him an enjoyable experience. Trudy Nicks, of the Provincial Museum of Alberta, has been a helpful consultant and her cheerful spirit has been appre-

ciated during the final stages of the writing. Jennifer Sawchuk deserves special mention for displaying a great deal of patience with her parents during their preoccupation with this work.

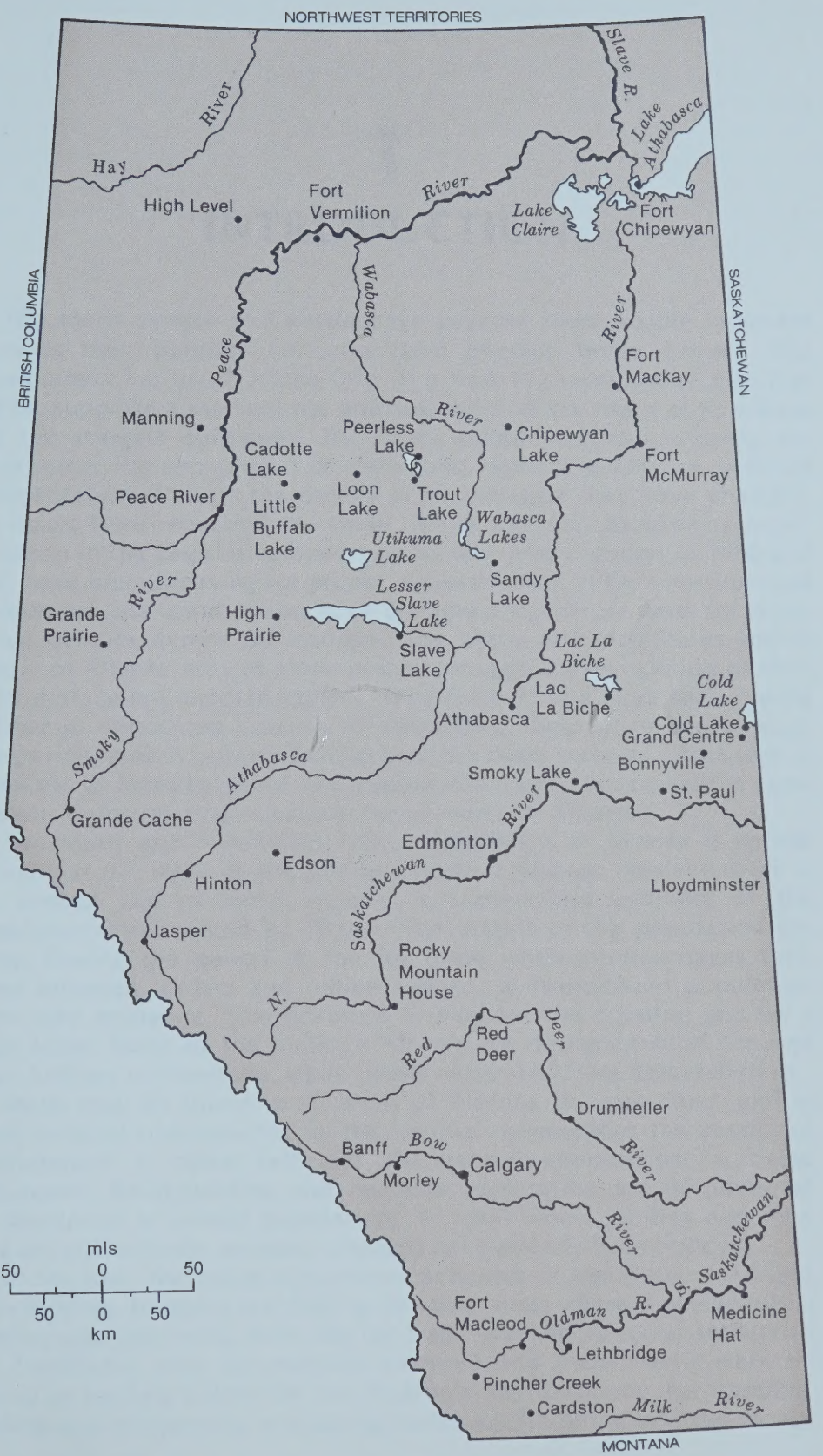
The Land Claims Research Project of the MAA first began under the presidency of Stan Daniels. With him we have proved that with determination and strong will, there is a way. This book is a result of that struggle.

J. S.
P.S.

Edmonton
June 1981

ABBREVIATIONS USED IN THIS TEXT

AMNSIS	Association of Metis and Non-Status Indians of Saskatchewan
DIAND	Department of Indian Affairs and Northern Development
HBC	Hudson's Bay Company
HRDA	Human Resources Development Authority
MAA	Metis Association of Alberta
MMF	Manitoba Metis Federation
NADC	Native Area Development Committee
NBAMNSI	New Brunswick Association of Metis and Non-Status Indians
NCC	Native Council of Canada
NWC	North West Company
PAA	Provincial Archives of Alberta
PAC	Public Archives of Canada
RG	Record Group


NORTHWEST TERRITORIES
BRITISH COLUMBIA
SASKATCHEWAN
MONTANA
Hay River
High Level
Fort Vermilion
Slave R.
Lake Athabasca
Lake Claire
Fort Chipewyan
Wabasca River
Peace River
Fort Mackay
Manning
Peerless Lake
Chipewyan Lake
Fort McMurray
Cadotte Lake
Loon Lake
Trout Lake
Wabasca Lakes
Peace River
Little Buffalo Lake
Utikuma Lake
Sandy Lake
Lesser Slave Lake
Grande Prairie
High Prairie
Slave Lake
Lac La Biche
Athabasca
Cold Lake
Cold Lake
Grand Centre
Bonnyville
Smoky River
Athabasca River
Smoky Lake
St. Paul
Grande Cache
Edmonton
Edson
Hinton
Saskatchewan River
Lloydminster
Jasper
Rocky Mountain House
N. Saskatchewan River
Red Deer River
Red Deer
Drumheller
Banff
Bow River
Morley
Calgary
S. Saskatchewan River
Fort Macleod
Oldman R.
Medicine Hat
Lethbridge
Pincher Creek
Cardston
Milk River
mls
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km

1
INTRODUCTION

The Metis people of Canada have become more visible in recent years as their political concerns have become better known. This development has taken a long time. It is now 112 years since Louis Riel and his supporters asserted the political rights of the Metis at Red River and the struggle continues. The Metis people are still pressing the government for recognition of their land rights and for fair political representation. Though the details of the struggle may have changed, the issues have remained the same. While Riel was demanding representation in the Legislative bodies of his day, Metis leaders in 1980 and 1981 have been lobbying for proper representation in the constitutional revision process. Land claims have become a significant issue for many native peoples across the country. The Metis and Non-Status Indian people of Alberta are not alone in their struggle for recognition of their rightful place in Canadian society. They are part of a large and growing number of concerned citizens contemplating their future in this vast, energy-rich land. It is our intention that this book serve as a first step in a process of learning about and making decisions concerning the state of Metis rights relating to land in the province of Alberta.

The Metis and Non-Status Indian population in Alberta is spread throughout all areas of the province, with a heavier concentration in the central and northern regions. A conservative estimate of the population's size would be 75,000. The origins of the population are many. During the period of the fur trade when intermarriages took place between traders and native women, a mixed-blood population came into existence. This occurred throughout the country, and on a large scale. Some of the Metis in Alberta are descendants of the Red River Settlers in Manitoba, while others emigrated from Saskatchewan.

Metis may be found in all areas of Alberta, in large cities, and in small isolated communities. In the smaller communities the impact of development is being felt and the natural environment is being threatened. Road-building and resource exploration are intruding on the territories of animal populations. In areas where hunting and trapping are still actively pursued, changes have already been noticed.

In the past, the major subsistence activities of the Metis of Alberta were hunting, trapping and fishing. In some areas where it was feasible, farming was practiced. With the fur trade and the influx of settlers to the Northwest, new occupations emerged and many Metis were involved in hauling freight for the Hudson's Bay Company, fur trapping, guiding and interpreting, and doing numerous labouring jobs for the fur

trade posts and companies. Many old-timers can recall these occupations, either from their parents' recollections or their own. No matter what the job was, there always remained a strong tie to the land and the natural environment. Today this bond to the land and its resources is still strong and closely linked with the identity of the people who have lived and worked on the land and depended on it for a livelihood for so many generations.

In the more recent past, the Metis people have lived in a more precarious situation, often "squatting" on lands that could ultimately revert to the province or land developers. There is an uncertainty about how long some areas can continue to be occupied. This is dependent on resource development, road construction, tourism and other factors whose control lies outside of the small communities. Many have already faced relocation and have seen previous home sites bulldozed down in the name of progress. This situation will undoubtedly be repeated unless measures are taken to provide some security for the lands the Metis people occupy.

These land issues are an integral part of a complex picture and cannot be dealt with in isolation. If a land base is to be developed, it must be done in conjunction with an economic plan, social development and an improved education system. Direct participation by the Metis themselves is essential. A land base in itself is not necessarily productive, but a land base in combination with an overall development plan would ensure a strong human component and the protection of basic human rights. Before resource development proceeds further, the issue of a just land settlement must be addressed and the human factor must be given primary consideration.

This book outlines and clarifies some of the more relevant issues pertaining to Metis land rights in Alberta. We have taken a political-historical approach in order that the contemporary situation be understood in perspective. This work is by no means an exhaustive study. During the course of the writing we have come across many other research areas which we have not been able to pursue. It is hoped that this work will prompt others to continue the study of Metis history in Alberta.

In Chapter 2, *Historical Overview: The Metis Nation*, we trace the development of Metis identity and political consciousness in the prairie provinces. This originated in the Red River Settlement of Manitoba, where the New Nation of the Metis people under the leadership of Louis Riel, was born and where it prospered. This political identity was widespread and extended westward into what is now the province of Saskatchewan. The Metis population was an active one, frequently on the move. Large numbers migrated northwest and south from Red River and their political influence extended to these areas. Metis communities developed throughout the prairies and western parklands. The Metis people used the land extensively in the fur trade and in farming. As the West became more developed, the Metis were actively engaged in transportation and freighting. In the province of Alberta, as elsewhere,

the Metis were employed along the major transportation routes as settlements grew and the demand for supplies became greater. Once the railroads were built, however, the labour once provided by the Metis was replaced by new technology and the Metis were forced to seek new types of employment. In some cases they were successful and in others they were not. The economic condition of the Metis people today stems directly from their experience in the development of the West and the ways in which they were slowly alienated from their lands. This alienation is the result of many factors; prominent among them is the scrip programme in the North-West.

For many years, the Alberta Metis have been politically active in an attempt to regain the self-sufficiency they once had. The Metis Association of Alberta, now fifty-three years old, was formed in order to draw attention to and marshall support for the plight of the Metis and their need for a land base. Over forty years after the establishment of the Metis Settlements, the majority of the Alberta Metis are still in need of a land base on which to develop a productive economy. This issue remains a priority of the Metis Association of Alberta.

Aboriginal Title, the subject of Chapter 3, elucidates the legal status and the aboriginal rights of the Alberta Metis. It examines the background of the concept of aboriginal title in the context of colonialism and compares its original meaning with that held by the Canadian government and the Metis people today. The meaning and use of the term, aboriginal title, has evolved since it was first conceived and its meaning in the legal sense is often obscured by popular misconceptions put forth by the media. Misuse of the term tends to generate an unfavourable response from society-at-large, and rather than educate, alienates those who lack an understanding of the term and its implications.

Louis Riel's perceptions of aboriginal rights complemented his view of the Metis Nation. The Metis formed a political entity with a strong sense of group identity. Riel foresaw that this identity could continue and form a part of the strength of future generations. He did not foresee the dispersal of the population which occurred after the 1885 Rebellion and the ensuing loss of identity experienced by some. Group identity and the strength which was inherent in this was the basis of Metis political consciousness and of Riel's interpretation of aboriginal title and its meaning for the Metis people. The scrip programme designed by the government was in opposition to this philosophy, as it was based on settling claims to the land on an individual basis, thus ignoring the history and political development of the Metis in the Canadian West.

The usefulness of the concept of aboriginal rights is considered with reference to contemporary land claims cases which have come before the Courts, such as the Nishga case in British Columbia and the Baker Lake Inuit's. The issue of whether or not to go to the Courts is examined in light of these cases.

A full chapter has been devoted to the subject of "scrip". This, like aboriginal title, has often been misunderstood and the details of its

meaning and use have often been blurred in descriptions of it. In our analysis we have attempted to rectify some of these mistakes. Undoubtedly we too have glossed over some aspects which should be delved into more intensely and which other researchers have devoted more time to. Considering the volume of data available on the subject of scrip, it is conceivable that an entire volume could be written about it in the future. As a research subject it has been greatly overlooked in the past, but with the current interest in land claims research throughout Canada, a comprehensive study of scrip and the implications it has had for the Metis, would be a timely work.

In Chapter 4, we define what scrip was and describe the various kinds which were issued. We then examine in detail the regulations governing its distribution and subsequent use and the effects of these on the Metis. What becomes clear is that the rulings themselves were not clear, and were at times actually contradictory. Consideration is then given to why the Metis sold their scrip. This was not, as was often believed, necessarily a sign of improvidence; a number of different factors came into play which forced the Metis to make this choice.

The process of scrip distribution and its pitfalls is the subject of the second half of this chapter. While the system was designed to allow the claims of all North-West Half-breeds to be heard, many people nonetheless missed out on this opportunity and their claims have never been settled. As for those who did make claims and receive scrip, few benefits followed. Scrip speculation was widespread and while the speculators used scrip for their own economic gain, the Metis were further entrenched in their poverty as they became alienated from the land. Our analysis demonstrates that the Metis people have not been compensated fairly for the loss of their land and that this situation has yet to be corrected by the government.

Chapters 5, 6, and 7 have been devoted to three different responses made in the past to the Metis and their struggles for land. Chapter 5 deals with the first experiment in the establishment of a Metis colony in Alberta, St. Paul des Metis; Chapter 6, with the eight Metis Settlements; and Chapter 7, with the community of Grande Cache, where a land settlement was made with the Metis in the 1970's. Only the latter represents an actual land claims settlement between the government and the Metis.

St. Paul des Metis was a farming colony administered by Fathers Lacombe and Therien and the Roman Catholic Church from 1896-1909. It was designed to provide a secure place for the Metis to practice farming while at the same time being protected from members of the dominant society. It represented a joint venture of Church and State at the expense of the Metis who, as it turned out, were the pawns in a political game; incidental in the overall plan in which Lacombe and individual government officials were the key policy makers. The needs of the Church were considered first; the needs of the Metis came last. The Metis' desire to keep the Colony in operation was ignored. In 1909 it was opened to homesteading, and French-Canadians who had been

Fig. 1.1 Half-breed scouts, c. 1872-74. Manitoba Archives

informed in advance by Father Therien of the date they should appear at the Edmonton Dominion Land Titles Office, made their claims for Colony lands. This move precluded settlement by others, including most of the Metis. Within a few years, even those few Metis who had obtained land, dispersed. They faced discrimination by the French-Canadians, and those on smaller plots of land were unable to provide enough grazing for their livestock. For the Metis, the Colony experience was not a beneficial one.

Approximately thirty years later, the Metis Settlements were established in central and northern Alberta. Like St. Paul des Metis before them, they were modelled on the Paraguayan Reducciones of the sixteenth century. Years of negotiation preceded the creation of the Settlements. The moving forces behind this effort were the early leaders of the Metis Association of Alberta, in conjunction with government. The factors which spurred this concern were the depressing economic plight of the Metis, their poor health and lack of education. Many were landless and without a means of subsistence. Prompted by these circumstances, several people banded together and held a series of organizational meetings and the Metis Association of Alberta was formed. The early work of the Association was directed towards securing government assistance for improving the living conditions of the Metis.

In 1934 a Commission was established by the Alberta government to investigate the "health, education and general welfare of the Half-breed population of the Province".[1] The outcome of this and the previous negotiations was the formulation of the *Metis Population Betterment Act* of 1938, and the establishment of the Metis Colonies, later known as the Metis Settlements. Today these are represented by the Federation of Metis Settlements which was formed in 1971. The Settlements were created as a social welfare plan for destitute Metis, as the government made clear at the time, and do not represent a land claims agreement. They were also designed for the benefit of only a very small percentage of the Alberta Metis population.

Grande Cache, located in west-central Alberta, is a small community on the outskirts of Willmore Wilderness Provincial Park. The Metis population of the community has a long history, with some members coming from the immediate area and others from Jasper House. Those from Jasper House relocated at Grande Cache in 1910 when they were evicted from Jasper National Park. In the early 1970's a land settlement was negotiated in Grande Cache with the local Metis population through their representative body, the Native Area Development Committee. These negotiations were finalized in 1975. Lands were granted and four co-operatives and two limited partnerships were established, with an initial five-year tax-free period included. The future of these lands remains in doubt, due in part to the fact that economic development plans have not materialized and wage labour has not sufficiently replaced the former viable native economy.

Fig. 1.2 Metis couple in jumper going to Lac La Biche for New Year's celebrations, 1895. Glenbow-Alberta Institute

In the concluding chapter we present *The Basis of a Claim*, where we assert that the human rights of the Metis have been violated. This is supported by documentation from legislation such as the *Dominion Lands Act* and the *Manitoba Act*. The violation of these rights reverts back to the ways in which the Metis were alienated from their land and how this process was often condoned by government officials of past administrations. The time is long overdue for a recognition of this fact by the government and for a rectification of past wrongs.

A note must be made about the terms Metis, Half-breeds, Status and Non-Status Indians, and Treaty and Non-Treaty Indians in this book. The terminology we have used to refer to the Metis people has of necessity varied from chapter to chapter, depending on the historical period and geographic location under consideration. For general use in the text, we have used the term Metis. This term has come to include all people of mixed Indian-white ancestry in the prairie provinces, and in recent years, elsewhere in the country. The term, when used this way, includes Non-Status Indians (those Indians not subject to the terms of the *Indian Act*). Taken together, these groups form a very large and varied population with an estimated size of over 750,000 across Canada.

In the chapter, *Historical Overview: The Metis Nation*, the terms Metis and Half-breed are used to distinguish the two populations of mixed-blood peoples in the Red River Settlement in Manitoba. The Metis of Red River were of French-Indian descent and were the organizers and participants of the large, communal buffalo hunts for which they became well known. The Half-breeds were of Indian and English or Scottish background and for them the buffalo hunts played a less significant role. Though together these two groups constituted the majority of the population at Red River and were set apart from the white population, they led different lives and developed different traditions. Their two identities remained strong at Red River at least until the first resistance movement of 1869-70, at which time many people emigrated from the area to points south and west.

In Chapter 4, *Scrip*, the term Half-breed is used throughout and it refers in this case to both Half-breed and Metis people, that is, people of mixed Indian-white ancestry, whether the white background be French, English, Scottish or Norwegian. This follows the usage of the federal government in the latter half of the 1800's and the early part of the 1900's, when the category Half-breed was established as an all-inclusive term in legislation, government documents and correspondence, etc. It was not intended as a derogatory term, although in later years, it sometimes did take on this connotation. It simply separated for administrative purposes two populations — Indians who were to be settled on reserves and Half-breeds who were allowed scrip. The commissions which were established to investigate and deal with Half-breed claims in the North-West Territories between 1885 and 1906 were called the Half-breed Commissions or Scrip Commissions. They dealt solely with claims of the Half-breeds. At times, the Treaty Commissioners

were delegated to investigate Half-breed claims when it was expedient. They would hear Half-breed claims in an area where they were negotiating a treaty or taking adhesions to a treaty. Not only did the government use the term, the Metis used it themselves. One of the earliest Metis (or Half-breed) associations in Canada was called the Half-breed Association of St. Albert. This was in existence at the turn of the century and was active in petitioning the government on scrip matters.

Similarly, in the other chapters, one or both terms appear. We have tried carefully to follow the usage appropriate to the time and place. As late as the 1930's in Alberta the term Half-breed appeared in the government record, although by 1938 when the *Metis Population Betterment Act* was passed the term Metis had taken precedence. Alberta is the only province which has officially defined the term Metis. The definition was formulated for purposes of identification of the population the provincial government would administer to under the terms of the *Metis Population Betterment Act*. Designations were then made about who was eligible to live on a Metis Settlement. At first, Metis persons (for the purposes of the *Act*) were defined as being of mixed Indian-white ancestry, "who were neither Indians nor Non-Treaty Indians, as defined in the *Indian Act*."[2] In 1940, the term was re-defined to include provisions for persons having not less than one quarter Indian blood, in addition to being neither Indians nor Non-Treaty Indians under the *Indian Act* definition. It must be noted that in Alberta the term Non-Treaty Indian is used interchangeably with Non-Status Indian as the whole of the province is covered by treaty. The term Status Indian is inclusive of both Treaty and Non-Treaty Indians; many Indians who are Status Indians as defined by the *Indian Act* have never signed treaties with the government.

Finally, a few words are in order about the writing and editing of the text. J. Sawchuk and P. Sawchuk shared the editing of each chapter; T. Ferguson joined in the editing of Chapters 2, 3, 5, 6, and 7. J. Sawchuk is responsible for writing Chapters 3 and 8 and Part 1 of the Scrip chapter. P. Sawchuk wrote Chapters 1 and 2, and Part 2 of the Scrip chapter. T. Ferguson wrote Chapters 5, 6, and 7. The responsibility for the content rests with the authors and not with the Alberta Law Foundation nor the other funding bodies.

Footnotes

1. Report of the Royal Half-breed Commission. PAA.
2. See Chapter 6.

2

HISTORICAL OVERVIEW: THE METIS NATION

ORIGINS OF THE METIS IN WESTERN CANADA

Red River Settlement

The fertile land of the Red River area of southern Manitoba where the Red and Assiniboine rivers meet was the birthplace of the Metis Nation in Western Canada. The population emerged and grew steadily as the fur trade economy flourished in the West. By the mid-1700's a large number of fur traders had entered the interior of what was to become Canada and had quite naturally formed liaisons with the Indian population, including the Cree, Saulteaux and Assiniboine. Many marriages took place between the traders and the Indian women and it was not long before a large and fast-growing mixed-blood or Half-breed population was in existence. In time, this group became the majority in the area and came to play a key economic role.

Prior to the Hudson's Bay Company (HBC) activities in this area were those of the North West Company (NWC). It was comprised of both Scottish and French traders, was based in Montreal and had been formed in 1784. Its operations were different from those of the HBC, the latter originally preferring to maintain posts along the shores of Hudson Bay, while the NWC traders moved inland from the start of their involvement, forming liaisons with Indian groups which became valuable trade contacts. The HBC was slow in realizing the value of these relationships, while the NWC strongly encouraged them from the beginning.

The domain of the Hudson's Bay Company was a vast one. In 1670, the Company received a charter from King Charles II which provided for a trade monopoly over the area called Rupert's Land, which included the area covered by all of the waters which drained into Hudson Bay. With the establishment of the North West Company came competition which lasted until 1821 when the two companies merged under the name of the Hudson's Bay Company.

The two companies were distinguished largely by the ethnic backgrounds of their employees. While the HBC men were recruited from England, the Scottish lowlands and the Orkney Islands and were usually Protestant, the NWC employed French Canadians with a Roman Catholic background and Highland Scots.[1] The mixed-blood population which developed at Red River consisted of two main groups, the English

Half-breeds and the French Metis. The French-speaking Metis always outnumbered the English-speaking Half-breeds and together, by 1870, they represented the majority of the population in Red River, with a population of over 10,000 as compared to a white settler population of about 1,600.[2]

In the early part of the 19th century, prior to the merger of the two companies, a plan for the establishment of a colony of Scottish settlers was proposed to and accepted by the Hudson's Bay Company. Lord Selkirk received a grant for 116,000 square miles in the valley of the Red River in 1811 and the first group of settlers arrived in 1812. From this time until 1838 the settlement was administered by the colony officials. After Lord Selkirk's death his heirs took over, but they eventually returned control to the Hudson's Bay Company. This area and all of Rupert's Land was governed by the Hudson's Bay Company until 1869 when the Dominion of Canada took control.

The Metis were a key socio-economic and political force in Red River. One of the most important activities in the area, indeed one of the very reasons for the Settlement's existence, was the buffalo hunt, organized and administered with expertise by the Metis. The hunt was essential to the entire fur trade in the North West because it provided inexpensive and plentiful provisions in the form of pemmican, made from buffalo meat and preserved with berries and fat, for the maintenance of the trading posts and boat brigades.

The buffalo hunt also formed the basis of Metis social organization. It was in the context of the hunt which involved the mobilization of great numbers of people, often over 1,000 at a time, that Metis' leadership, identity and unity developed. A parallel situation is found among the Alaskan Eskimo (Inuit) whose whaling complex provided a basis for the social organization developed on the land.[3]

The presence of the Metis, organized as they were, was essential and indeed critical in negotiating the entrance of Manitoba as a province into Confederation. As the time for Confederation neared, it became clear that the HBC monopoly was close to its end and that the West would soon be opened up for large-scale immigration and settlement. The Metis knew too that this would affect their lifestyle and their livelihoods in the Red River area.

In 1869 the Metis precipitated what was to be called the Red River Rebellion, and a Provisional Government was set up under the leadership of Louis Riel with the support of the French-speaking Metis and the English-speaking Half-breeds. After much negotiation, the *Manitoba Act* was passed in 1870 and the province of Manitoba entered Canadian Confederation. Land in the amount of 1,400,000 acres was to be provided for "the children of the Half-breed heads of families".[4] In 1874 by an Act of Parliament provision was made for heads of families to be included in the land grants.[5] In addition to the concerns over land were those relating to greater representation in the federal government, treaties to be negotiated with the Indians of the area, protection of the language rights of the population (both French and English) and the

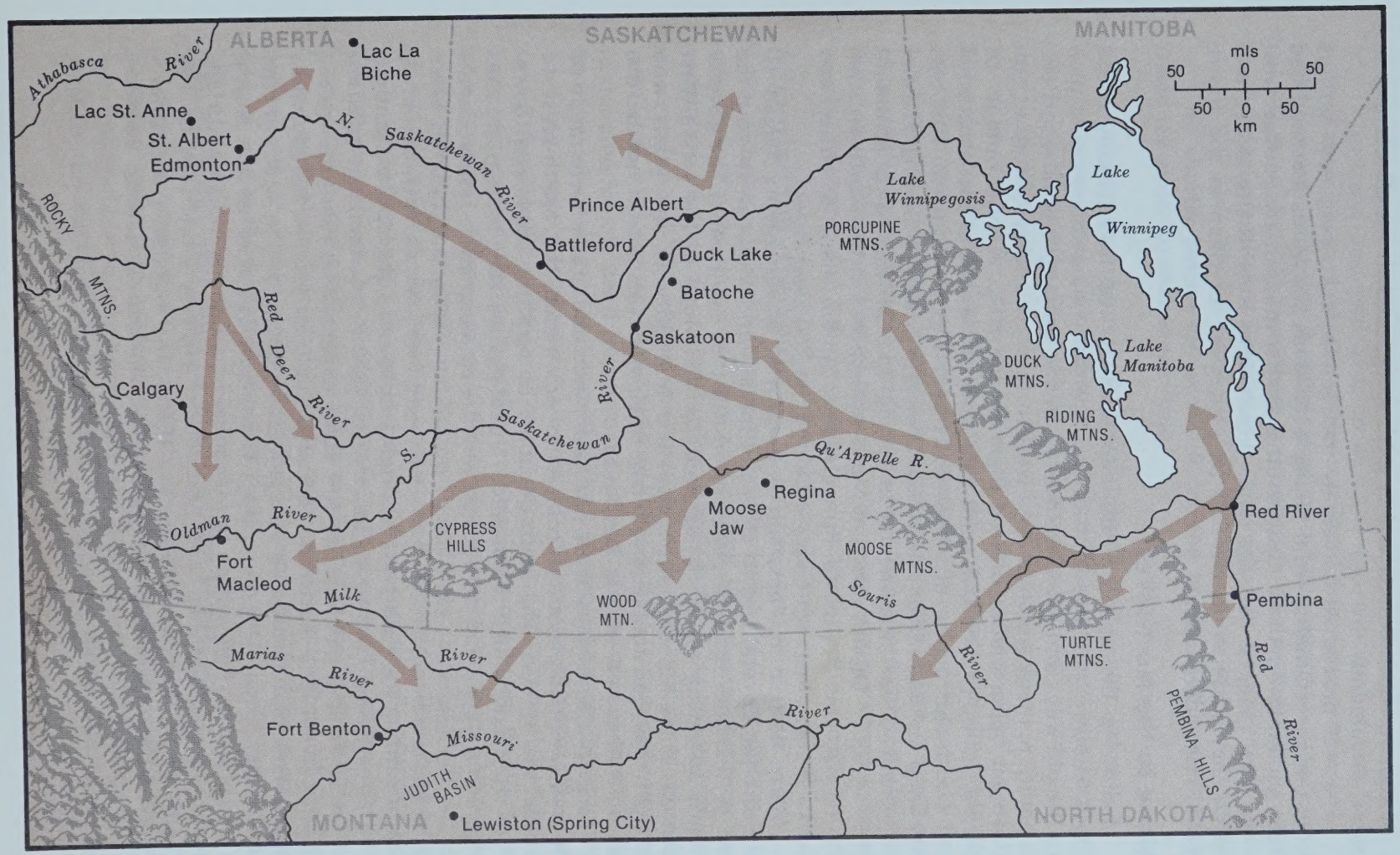

Fig. 2.1 Map of Migration Patterns

provision for both French and English to be used in the courts and in public documents.

The Act proved to be largely ineffective in keeping new settlers from the East (Ontario) from taking over lands the Metis assumed had been set aside for them. One result was that many Metis moved west when they realized that the lands which were once theirs to use and which they understood were to be protected for them in the future were irretrievably lost.

Move to the North-West

Following the upheaval of their lives at Red River, many Metis chose to move west in search of open territory where they could pick up the old ways and live unhampered by the onslaught of new settlers. In addition, many simply moved west to take advantage of further employment opportunities offered them by the HBC. A large number of people settled in the Duck Lake area (now north central Saskatchewan) and one major centre of Metis settlement was St. Laurent. This was inhabited by Red River Metis and Western Metis, including Gabriel Dumont who was instrumental in setting up a provisional government there in 1873.[6] Other important Metis settlements in the North-West included Batoche, Battleford, Prince Albert, Lac Ste. Anne, St. Albert and Lac La Biche; others were located along the Red Deer River.

Many eastern businessmen and railway entrepreneurs began to pressure the government to clear the Indians and Metis away from the new settlements and transportation routes they envisioned. The government's surveying of the lands used by the Metis in the North-West created a feeling of uncertainty and insecurity in the Metis who thought they had found land where their lifestyles would not be disrupted as they had been at Red River.

Large blocks of land were put up for sale and grants were made to the railways. Colonization companies advertised the North-West to prospective settlers. The lands occupied by both the Metis and the Indians were again being threatened. In dealings with the Indians, treaties were being signed and the Indians were being assigned to reserve lands. As for the Metis (or Half-breed) population, scrip programmes were being implemented, albeit very slowly and inefficiently, with the intention of settling their claims to aboriginal title and rights to their lands.

The extensive land speculation after 1870 in Manitoba in addition to the gross mis-handling of the scrip programmes and the treaty signings, eventually led to the 1885 Rebellion. Sir John A. Macdonald's government had refused to recognize the needs of the Metis in the North-West. Edgar Dewdney, then Lieutenant-Governor of the North-West Territories, had written to Macdonald concerning Indian and Half-breed matters. Both he and Macdonald appeared unaware of the magnitude of the unrest during the 1880's. In response to Dewdney's letters to him regarding Riel's movements, Macdonald stated:

> Sir David MacPherson will take the Half-Breed question in hand and endeavor to settle it this winter, but no amount of concession will prevent starving people from grumbling and agitating — I have made up my mind to ask Parliament next session to increase the Mounted Police Force. . . .[7]

Very shortly before the actual Rebellion began in March of 1885, Dewdney wrote to Macdonald that:

> Indian matters in the North during the winter have been quiet and although we hear of a contemplated gathering at Duck Lake, I don't attach much importance to it.[8]

The events which followed have been described by many as the most dramatic in the history of western Canada.

After the Rebellion of 1885 more Metis people migrated west and also south, again seeking lands on which to pursue their traditional lifestyle. While some had chosen to farm, many still preferred a life of hunting, trapping and fishing.

Migration into the South

As southern Alberta (then part of the North-West Territories) was developed, a migration of Cree Metis from the central-northern area took place. In 1874, the North West Mounted Police post at Fort Macleod was established. The NWMP had been sent to the area in response to the Cypress Hills massacre of 1873 and the general feelings of residents in the area for the need for more protection. Once the post existed, the territory which was once under Blackfoot control was more open to the Cree. As contact increased a number of intermarriages took place between the Blood and Piegans. As the population of white settlers in the area also grew, marriages took place between them and the local Indian women.[9] These unions formed the basis of some of the larger Metis families in the south.

New opportunities opened up for the Cree Metis who engaged in the buffalo hunt into the early 1880's. They provided the NWMP with buffalo meat and pemmican. The Metis also worked for the freighting companies in the southern area and in Montana, providing much of the necessary labour. Metis settlements grew in Montana. Some of the better known ones were located at Fort Benton, Spring City (Lewistown today), and in the valley of the Milk River.

The Iroquois and the Fur Trade in the West

The fur trade had begun early in eastern Canada. With the experience gained in Quebec many Iroquois trappers moved westward with the trade, through Ontario and the prairies and into Alberta as far west as the Rockies. This migration of Iroquois, along with Saulteaux

and Ojibwa, resulted in intermarriages with Cree women native to the area. In addition to the Iroquois-Cree unions were many White-Cree marriages between fur trade company men and Cree women.

The Iroquois moved west over a period of years in the early 19th century, the main emigration occurring between 1800 and 1804.[10] While many returned to the East, a sizeable number chose to stay in the West and raise families. Many of these Iroquois descendants are resident in Alberta today. The population tends to be concentrated in the Grande Cache-Jasper area, although some have moved to other parts of the province. Some of the family names associated with the Iroquois background are Moberly, Joachim, Grey, Karaconti, Calliou and Nipissing.

THE ECONOMIC BASE OF THE HISTORICAL METIS

The Fur Trade and Freighting

The Metis were able to be continually employed in the fur trade as they did not limit themselves to a single occupation. At different times and in varied circumstances they managed to demonstrate their adaptability and talents. Among other things, they worked as interpreters and middlemen in trade activities and represented an important liaison between the fur trading companies and the fur-trapping Indians. Kin ties between the Metis and the Indians were useful in establishing good trade relations.[11]

One of the more vital roles the Metis played was to provide pemmican and other foods to the forts. Without these staples the fort personnel could not have survived. Provisions were also supplied for the traders carrying the furs to markets. It was indeed too costly an endeavor to provide supplies from the East or from overseas and the employees of the fur trading companies depended on a ready supply of locally produced foods to sustain them.

Transportation was another area in which the Metis were very visible. It was they who performed the hard labour of freighting prior to the technological advance of the railroad. Freighting for the fur trade posts came first, transporting goods from Hudson's Bay into the interior and the south. Later on, St. Paul, Minnesota became a distribution centre and freighters commuted between Fort Garry and St. Paul. When steamboats were introduced and when the railroads were built, Metis freighters lost their means of livelihood as goods could be transported more efficiently by these.

The Buffalo Hunt

The significance of the buffalo hunt in Metis life cannot be overemphasized. The hunts which were organized in the Red River area often involved over 1,000 individuals, took place over a period of several weeks, and required a complex and orderly organization. Strong and effective leadership was essential, as was the co-operation of all participants. The hunt is yet another example of Metis strength, organization and group identity on the prairies.

One of the more classic descriptions of the buffalo hunt in the Red River area is to be found in Alexander Ross' account based on his own experience.[12] He vividly describes the June 1840 hunt which involved a total of 1,630 individuals. At Pembina, which they reached after three days travel from the settlement, they held a meeting and formally organized the hunt.

At this first council meeting ten captains were selected, one of whom occupied the senior position. Below each captain were ten soldiers and ten guides. One of the responsibilities of the guide for the day was the care and raising of the camp flag. The flag remained raised until it was time for the camp to re-settle at the end of the day.

The guide became the "chief of the expedition" for the day he was guiding. The captains and the soldiers were all responsible to him during the time the flag was in the raised position. At the end of the day the soldiers and guides would again take over and determine the placement of each cart in the camp.

The carts were moved together side by side into a large circle, with both tents and animals being placed within the confines of this wall of wooden carts. In 1840, 1210 carts were used. This was the largest number on record to that date. In addition to this number of carts, which would stretch out a few miles in length when moving, were the dogs, of which over 500 were present during this hunt. The dogs were sometimes used as pack animals in the winter when snow conditions made it necessary.

A set of eight rules was laid down for the hunt at another council meeting. These were:

1. No buffalo to be run on the Sabbath-day.

2. No party to fork off, lag behind, or go before, without permission.

3. No person or party to run buffalo before the general order.

4. Every captain with his men, in turn, to patrol the camp, and keep guard.

5. For the first trespass against these laws, the offender to have his saddle and bridle cut up.

6. For the second offence, the coat to be taken off the offender's back, and be cut up.

7. For the third offence, the offender to be flogged.

8. Any person convicted of theft, even to the value of sinew, to be brought to the middle of the camp, and the crier to call out his or her name, three times, adding the word 'Thief' at each time.

In 1840 the camp had travelled nineteen days and about 250 miles before the buffalo were sighted. The following day the first chase (or "race") took place. Over 400 hunters took part and 1,375 buffalo tongues were counted at the end of the day. A race of this type, involving all of the hunters at once would take place around ten times on a summer expedition. The 1840 hunt ended on August 17th, having lasted just over two months. The provisions which resulted from such a hunt (pemmican, dried meat, fat) would last perhaps a month, at which time a second trip would begin.

USE OF THE LAND

Hunting and Trapping

The Metis people of the prairie provinces pursued the traditional pursuits of hunting, trapping and fishing. As new settlers moved into Metis territory, hunting and trapping areas were encroached upon and the Metis were forced to move farther west in order to pursue these activities.

There was a common misunderstanding on the part of newcomers regarding the Metis' use of the land. The new settlers could neither appreciate the way the subsistence of the Red River Settlement was dependent on the buffalo hunt, nor could they appreciate the amount of land needed for this pursuit. As far as they were concerned, the land was not being used at all unless it was under cultivation. Hunting and trapping was never seen as a viable means of making a living. Instead, the Metis and Indian way of life was seen as backward and as a hindrance to progress. Those who pursued traditional subsistence activities were expected to move out of the way or change their lifestyles.

From interviews with older Metis people in Alberta it becomes clear that these individuals and their parents and grandparents who were actively involved in hunting and trapping had an intimate knowledge of the land they used and this land has been defined by some in terms of actual hunting territories. It was not as if the land was used at random; there was an understanding about which land was used by each person or family.

Farming

In addition to a life of hunting and trapping of fur-bearing animals, fishing, and buffalo hunting, some Metis engaged in farming and occupied river lots along the Red River. Later, after the 1870 Rebellion, many Red River Metis moved west to farm along the South Saskatchewan River. Both the French-speaking Metis and the English-speaking Half-breeds had river lots and used them to varying degrees. These two groups can be distinguished by their different activities in the Red River Colony.[13]

While the Metis used their river lot residences during the winter and spring and went out on the communal buffalo hunts in the summer and

fall, the Half-breeds (of English and Scottish descent) were absent from their farms several times during the year. The farming was carried on throughout the year, although other activities such as fishing, trapping and freighting were pursued during the warmer months. Buffalo hunts also took place, but not on the scale of the Metis expeditions.

The survey system used at the Red River Colony followed that of French Canada. Each farm had river frontage, with the land extending back from the river in narrow strips which varied in width and were approximately two miles long. Behind each farm were hay lands or the "hay privilege", "the exclusive right of cutting hay on the outer two miles immediately in the rear of the river lot."[14]

Metis farming was not limited to the Red River area alone. Many of those families who migrated west in the late 19th century sought out lands for farming. In Alberta, a number of farms were established in the Grande Prairie area and also in the southern part of the province, although the majority of the Metis population preferred a life of hunting, trapping and fishing and moved to areas where these could be pursued. As in Red River, there were a number of subsistence activities, depending on the time of year and the accessibility of suitable land and game. Hunting and trapping areas were often disturbed by westward expansion of White settlement and people were forced to migrate into less populated and often less desirable areas.

Hivernant Villages

Those Metis who continued to pursue the nomadic life of the buffalo hunter grew in number between the years 1870 and 1885. It was during this period that many left the Red River Settlement in search of new land and more opportunities.[15] Not only would the hunters travel about, but their families would move with them and these groups were known as the *hivernants*, winterers or winter-rovers. Rather than returning to permanent sites as did the people of Red River when the hunts were over, these *hivernants* would set up cabins out on the prairies and in parkland areas and spend their winters there.[16] Over thirty *hivernant* sites have been documented in Alberta, Saskatchewan and northern Montana and most likely more exist for which documentation is not available.

> Hivernant subsistence was based upon the hunting of buffalo, which provided food directly in the form of meat and fat and indirectly in the form of buffalo robes, meat and pemmican which were traded for tea, flour, liquor and other consumables. Buffalo were hunted the year round, with two major communal hunts occurring in the summer and autumn and the more individual form of hunting being pursued throughout the winter. In the spring the wintering villages were abandoned as soon as the snow had melted from the prairies (usually mid-April to early May) and the large

> communal hunting parties — large trains of Red River Carts carrying the Metis families and their possessions would proceed towards areas of the prairie where concentrations of buffalo could be found.[17]

The larger hivernant settlements would often be served by a priest who would stay with the group throughout much of the winter, in addition to some free-traders. The settlements continued into the early 1880's and their disappearance accompanied that of the last buffalo herds, upon which their subsistence had depended.

Trade Routes

The Metis were engaged for a long time in freighting in the prairies. They travelled north from the Red River Settlement and elsewhere to bring goods from the northern points situated on Hudson Bay and when St. Paul, Minnesota grew and became a distribution centre, they travelled south on the Red River commuting between St. Paul and the Settlement. Farther west, the Metis worked as freighters on the branches of the North Saskatchewan River until steamboats and railroads took over and the freighting jobs were lost.

In southern Alberta much trade was carried on with Montana merchants (notably I. G. Baker and Co. and T. C. Powers). Kin ties were established across the border and many Metis eventually moved to Montana and established residence there. Their descendants may be found there today.

From tracing migration patterns it is evident that Metis migrated from the Red River area following the first Riel Rebellion of 1869 and 1870 and moved south into North Dakota and Montana. A number of settlements were established, particularly along the Milk River and in the Judith basin. After the 1885 Rebellion in the North-West there was another migration to the south and these patterns continued.

THE DEVELOPMENT OF METIS NATIONAL IDENTITY

The Development of the Metis as a Distinct People

The historic Metis population grew up in the Red River area of Manitoba during the fur trade period. From the early 1800's the size of the group grew considerably, eventually representing a majority of the population by 1870, with the French-speaking Metis outnumbering the English-speaking Half-breeds.

A number of events took place in Red River prior to the first rebellion, or insurrection, which demonstrate the strength and cohesiveness of the Metis at that time. These include the Pemmican War (1814), the Battle of Seven Oaks (1816, often referred to as the "Massacre"), and the Guillaume Sayer trial (1849). In the Pemmican War, Miles Macdonell, Governor of the Selkirk Colony, proclaimed that the Metis were

not to run buffalo on horseback or to remove pemmican from the area for transport elsewhere. Pemmican was a staple provision for the Colony and the officials felt the need to control its distribution. The Selkirk colonists had faced hard times since their arrival in 1812 and were forced to subsist on a small food supply. The Metis working for the North West Company, however, depended on the pemmican as their main provision during the long and arduous journey transporting furs to the East. The controversy went on and eventually erupted into the Battle of Seven Oaks in 1816.

In 1815, a new governor, Robert Semple, had taken charge of the Selkirk Colony and the disagreements with the Metis in the area continued as they had under Macdonell. Cuthbert Grant, who had been active as a Metis political leader, was instrumental in organizing the Metis and proclaiming their nationhood during this period. Grant was an employee of the North West Company and an avid leader of the buffalo hunts. The NWC had enlisted Grant's aid in organizing the Metis during the period of its competition with the Hudson's Bay Company. Metis support was necessary if the NWC was to maintain some control over the trade in Red River. The titles which had been conferred upon him by the North West Company included *Captain of the Metis, Captain General of the Half-breeds,* and after the merger of the NWC and the HBC, *Warden of the Plains.*

The Metis had stood their ground on the pemmican issue and the right to run buffalo on horseback. Their cohesiveness and strength was demonstrated in their refusal to accept orders which were totally opposed to their lifestyle and means of making a living, particularly when given by people perceived as "outsiders".

Direct confrontation with the Hudson's Bay Company came later, with the trial of Guillaume Sayer and other Metis accused of trafficking in furs. The HBC wanted complete control of the fur trade, but the Metis finally won their freedom in the trade in 1849. Sayer was actually convicted at the trial, theoretically confirming the Bay's position on the trade, but he was released with only an admonition. There was such a large number of Metis outside the courthouse and the threat of violence was so imminent that the charges against the others on trial were dropped and Sayer was set free. The Metis interpreted this as a vindication of their actions.

It was in the Red River Settlement that Metis political consciousness grew and flourished, culminating in Louis Riel's List of Rights and the negotiation of Manitoba's entrance into Confederation as a province in 1870. Later, in 1885, Metis political consciousness was demonstrated in the North-West Rebellion.

Though Half-breeds and their descendants appeared elsewhere in Canada during the period of exploration, early settlement and the fur trade, it was only in the prairies that the population grew in numbers and political consciousness to the point of becoming a powerful body with a distinct ethnic identity, one to be reckoned with by the government and other settlers. This strong sense of ethnic identity persists most noticeably in the prairie provinces today.

Fig. 2.2 Prairie covered with buffalo, Dakota Territory, 1853. Glenbow-Alberta Institute

Fig. 2.3 "Half-Breeds Running Buffalo". An oil painting by Paul Kane. Royal Ontario Museum

Fig 2.4 Trading at Fort Walsh, c. 1880. Saskatchewan Archives Board

Fig 2.5 Half-breed hunters' camp, c. 1872-74. Manitoba Archives

Fig 2.6 Half-breeds camping, c. 1872-74. Manitoba Archives

Fig 2.7 Louis Riel and Associates, c. 1869. Glenbow-Alberta Institute

Fig. 2.8 Louis Riel, c. 1876. Manitoba Archives

Fig. 2.9 Gabriel Dumont at Red River, c. 1880. Glenbow-Alberta Institute

Historian's Interpretations

Much has been written by historians about the development of western Canada and the confrontations which occurred between the white population and the Indians and Metis. Unfortunately, this writing is coloured by a bias which holds that white civilization is superior and the so-called "primitive" societies inferior, thus rationalizing white takeover of lands and dominance in government policy-making affecting all groups in the population.

With regard to the first rebellion of 1869-70, Stanley remarked:

> A primitive people, the Half-breeds were bound to give way before the march of more progressive people. It was the recognition of this face and the gradual realization of their inability to adjust themselves to the new order that kindled the spark of Half-breed resentment which unfortunate circumstances fanned into the flame of insurrection.[18]

Stanley perceived the Metis society as being a static one, unable to come to grips with white civilization which was encroaching upon it. He failed to realize that the Metis were already part of the socio-economic system which was developing in the west. In fact, they were an integral part of the fur trade economy for many years. Living and working with the white economic system was not something new to them, but Stanley viewed their position thus:

> The Rebellion of 1885 was the last effort of the primitive peoples of Canada to withstand the inexorable advance of white civilization. With the suppression of the rebellion white dominance was assured.[19]

Others whose historical research covers the Metis of western Canada have also exhibited an ethnocentric bias. While Giraud[20] undertook extensive and well-documented research, his work is plagued by statements which reveal his patronizing attitudes toward the Metis.

Giraud places a great deal of emphasis on the role of the missionary and praises the effects the Church had on the Metis of western Canada. Discipline and orderly control were of prime concern to the missionaries in their work among the Metis.

> Among every group of winter-rovers there travelled rum vendors, themselves recruited largely from among the Metis. . . . All moral restraint was vanishing among the winter-rovers. . . . they were therefore experiencing the same moral breakdown as the Indians who had made contact with the Whites. . . . Those groups alone which were kept under the immediate watch of a missionary could escape this debasement. . . .[21]

Following the Rebellion of 1885, many Metis felt displaced and were living in dire circumstances. Like the Indians who had supported Riel, they faced destitution. Ethnocentic interpretations of their plight are not the most illuminating, but unfortunately seem to be the most common, such as this one by Giraud:

> The metis population accepted its fate passively. Around the towns and villages they waited for whatever chance occupations might come up, or else lived in apathy and misery because the ordeal which they were undergoing did not evoke in them that energy which made the superiority of the Whites.[22]

The Metis have for the most part been traditionally portrayed by historians as a passive group of people. This explanation fails to account for the reality of Metis political consciousness, identity and participation in the development of the West. The Metis were instrumental in the treaty-signing process in the prairies, facilitating contact and communication. They embodied the political force at Red River when Manitoba and the North-West became part of Canada. And they were responsible for bringing to a head the unrest in the North-West in 1885. The Metis can hardly be described as passive or apathetic during this dramatic period of Canadian history.

The "Rebellions" or Resistance Movements, Part I: Red River

> They lived off the land and were of the land. And it was land that caused the first confrontation between them and the new breed of people taking over the west.[23]

The unrest at the Red River Settlement which developed into a full-scale resistance movement was precipitated by the actions of the Canadian government during the planning for the transfer of Rupert's Land and the North-West Territory from the control of the Hudson's Bay Company to the Dominion of Canada in 1869. Though the actual transfer was to occur in the winter of 1869, the government acted hastily and sent out surveyors to the area months before the date of transfer.

Colonel Dennis was sent to the Red River area by Public Works Minister William McDougall and his Department to undertake surveys following the square township plan used in the U.S. Dennis arrived in the early summer of 1869 and met with an unfriendly response from the Metis farmers who greeted his survey party. The Metis took offence at the fact that the surveyors had arrived so early and unannounced. They had not been consulted on the plans for the survey which they perceived as an obvious threat to their river lot farms. Without deeds for the land they occupied, their position was definitely an insecure one.

In response to the news of McDougall's forthcoming arrival in Red River, the Metis met in mid-October of 1869 and formed the Comité National des Métis (National Committee of the Metis), blockaded the road in St. Norbert, and sent word to McDougall who was en route to the area from Pembina that he should not attempt to enter without the Committee's approval. In spite of all this, McDougall chose to forge ahead and cross the border, entering Red River country. He was forced to leave by Riel's men a few days later.

William McDougall had been chosen to be the first Lieutenant-Governor for Manitoba and the North-West Territories when the Dominion of Canada took over control of Red River from the Hudson's Bay Company. Since McDougall was already unpopular with the residents because of the early survey attempt, his appointment was not a wise move. The transfer of power was planned for December 1st and his premature actions with the survey only served to alienate the Metis settlers.

The number of men in Riel's armed force of French Metis grew steadily and in early November of 1869 Riel siezed control of Fort Garry. Representatives of the Canadian government who the Metis felt were not representing them or listening to their concerns were expelled. Riel then set about trying to convince the English Half-breeds and other settlers to join with him, although this proved more difficult than he had anticipated. He spoke of the need for a Provisional Government and lobbied for their support.

There was discontent in the settlement over the transfer of power from the Hudson's Bay Company to the Canadian government that McDougall represented. The Red River settlers themselves had not been consulted when this decision had been made and were not going to let such an important event go by without establishing their position. It was also at this time that the U.S. expressed interest in annexing the area. Riel, however, chose not to ally himself with U.S. supporters, but to negotiate with the Canadian government.

Opposition to Riel came from members of the Canadian Party, under the leadership of John Schultz. He and his supporters were pleased with the proposed takeover of the area by the Canadian government. When Riel and his men seized control of Fort Garry, members of Schultz's group were taken prisoner. One of those imprisoned was Thomas Scott (formerly of Ontario), who, following an escape from the jail in March 1870, was tried and convicted of treason, and executed the following day. Vigorous protests were heard from Ontario against the French, Catholic-based leadership at Red River and these became particularly vociferous over the execution of Scott.

On December 10, 1869 the Provisional Government flag was raised. Later that month Riel became president of the Provisional Government, taking over from John Bruce who had held the position since the formation of the National Committee two months previous. Ambroise Lepine was Riel's chief aide.

With Riel in control of Fort Garry and the Red River Settlement, the Canadian government was obliged to act. To assist in settling the disturbances, Prime Minister Macdonald arranged to send two men, the Very Reverend Grand Vicar Thibeault and Colonel de Salaberry, to Red River to speak on his behalf. In their footsteps travelled Donald Smith of the Hudson's Bay Company.

> No authority was given the Commissioners to conclude any definite arrangements with the insurgents, conceding them guarantees they demanded; they were authorized merely to use their influence to persuade the Metis to lay down arms.[24]

Smith met with a better response than did the two previous Commissioners and Riel gave Smith an audience upon his arrival at Fort Garry. On January 19th and 20th of 1870 mass meetings were held and were well attended by all segments of the population. The meetings lasted for a few hours each and were held out-of-doors to accommodate the few hundred people present. In spite of the severe cold they stayed and listened. The crowd was even larger on the second day of the meetings.

On the first day, Donald Smith addressed the audience and read a letter from Joseph Howe, Secretary of State for the Provinces, to himself, describing his appointment as a Commisisoner for the Red River disturbances. It read:

> Sir, I have the honor to inform you that his Excellency The Governor-General has been pleased to appoint you special Commissioner to inquire into and report on the cause and extent of the armed obstruction offered at Red River, in the North-West Territory, to the peaceable entrance of the Hon. W. McDougall, the gentleman selected to be Lieut. Governor of the Territory and to bring about the union with Canada. . . . You will, of course consult with Governor McTavish, and endeavor to arrange one concerted scheme between Mr. McDougall, The Hudson's Bay authorities, and yourself, for the pacification of the Country.[25]

It must be noted that the residents of the Red River Colony were not directly included in the arrangement.

In another letter Howe referred to the liberties and rights of the people of the North-West Territories, which were to be respected:

> You will now be in a position to assure the residents of the North-West Territories:
>
> 1. That all their civil and religious liberties will be sacredly respected.

2. That all their properties, rights, and privileges of every kind, as enjoyed under the government of the Hudson Bay Company, will be continued.

3. That in granting titles to land now occupied by the settler, the most liberal policy will be pursued. . . .[26]

Had the spirit of these statements been followed, the Metis and the other inhabitants of the Settlement would have been satisfied, their rights would have been protected, and the history of the next fifteen years would have been written differently.

These meetings served to activate the population. A committee was struck to draft a List of Rights. More meetings followed in February and delegates were then chosen to represent the Provisional Government in Ottawa.

The Manitoba Bill, which incorporated most of what was called for in the List of Rights was introduced into the House of Commons on May 2, 1870 by Prime Minister John A. Macdonald. On May 12th, after much debate between the Conservatives and the Liberals, the bill was passed and became the *Manitoba Act*. It was later passed in the British Parliament as the *British North America Act* of 1871.[27]

Louis Riel headed the Provisional Government in Manitoba until the summer of 1870. In August, when Colonel Wolseley's armed force arrived in the area to take control of Fort Garry, Riel fled to the U.S. The Prime Minister had been pressured into taking action against Riel and the Provisional Government and this meant the takeover of Fort Garry and the replacement of Riel with the appointed Lieutenant-Governor, Adams G. Archibald. Shortly after Riel's departure, Archibald arrived to assume his position, which he held until December 1872, when Alexander Morris took over.

Riel travelled in the U.S. and eventually took up residence in Montana and taught school at St. Peter's Mission. While there, he became active in local Metis activities. The strength of Riel and his influence over his people was demonstrated by the fact that he was twice elected to the Canadian Parliament while living in exile in the U.S. In March of 1875, by Order-in-Council, provision was made for the granting of amnesty to all people involved in the 1869-70 resistance at Red River, except for Riel, Lepine and O'Donohue. Riel's and Lepine's amnesty was to be granted after five years of exile beginning in 1875. His people's devotion to him and his leadership was to continue even during his absence and was to be demonstrated again when they asked him to return to the Saskatchewan district in 1884 to help lead them through a crisis not unlike that of Red River fifteen years before.

Creation of the Province of Manitoba

As we have seen, the Metis people under the leadership of Louis Riel were instrumental in negotiating Manitoba's entrance into Confederation. The List of Rights[28] formulated in early 1870 was to provide

the basis for the *Manitoba Act*.[29] Included in the List of Rights was provision for Rupert's Land and the North-West to enter Confederation as a province (Assiniboia), for the "properties, rights and privileges enjoyed by the people . . . (to) be respected," and for "treaties to be concluded between Canada and the different Indian tribes." Other items dealt with representation in the House of Commons, taxation within Assiniboia, voting requirements, road building and other public works, and the use of both French and English in the courts. Many of these were incorporated into the Act.

> The Manitoba Act was the result of negotiations between Ottawa and representatives of Riel's provisional government. It was endorsed by the provisional legislature in Red River, enacted by the Parliament of Canada and confirmed by Imperial Legislation.[30]

The *Manitoba Act* provided for lands in the amount of 1.4 million acres for the children of Half-breed families. In August of 1870 provision was made for the enumeration of Half-breed heads of families and their children and for the determination of the lands to be set aside for the land grant.[31] A census was then ordered in 1872 to determine the number of Half-breeds entitled to land under the Act.[32] In May of 1874, by another Order-In-Council, the land grant was extended to Half-breed heads of families. Five years after the *Manitoba Act* was given royal assent, the decision was made to appoint commissioners to examine and handle the Metis claims. Actual grants for land were not made until 1877 and onward. In the meantime, large numbers of the settlers were arriving from the East and lands which the Metis were interested in occupying were being encroached upon.

When Manitoba entered Confederation the rights over the land and natural resources were retained by the federal government. This was to occur again in 1905 when Saskatchewan and Alberta became provinces and would remain so until 1930 when the Natural Resources Transfer Agreements turned over control of land and resources to the individual prairie provinces. By retaining this control, the federal government was able to pursue its policy of focussing on settlement of the west and the building of the transcontinental railway (begun in 1880), without interference from local governments. With control in the hands of the federal government, policies for the surveying of land, the allocation of land and the building of a major transportation facility could be direct and unhampered by inter-government feuding. Since it was the federal government which made the provision for the Half-breed land grants, this arrangement facilitated the overall policy.

The "Rebellions" or Resistance Movements, Part II: The North-West

After the 1869-70 resistance movement at Red River many Metis people had migrated west and northwest to those areas where they

could pursue the hunting and trapping life they were accustomed to.[33] During this period, however, the buffalo on which the Red River Metis had once depended so heavily were decreasing in number. By the early 1880's it was no longer profitable or even possible to carry out the large hunts as in earlier times, and other animal populations were becoming smaller too. The Metis were threatened with another loss of livelihood and began to farm in order to eke out a living from the land. Unfortunately, the problems which confronted them previously in Manitoba were to re-surface again along the branches of the Saskatchewan River. This time, however, it was not only the Metis who were affected, but also white settlers who faced the same problem. In addition, many Indians who had taken treaty were living in destitution. They, too, were eager for the federal government to provide assistance to them and to honor the treaty commitments. Led by Big Bear and Poundmaker, the Cree of this area gave their support to Riel and his followers.

Conditions were very bleak in the 1880's with the decline in the buffalo population, the settlement of Indians onto reserves and cutbacks in food rations and other provisions. Many Indian bands were found living in poverty, facing starvation. Treaty 6 had been negotiated in 1876 and within eight years the health and welfare of those who entered into it had deteriorated. Petitions were written on their behalf by the missionaries in the area, but no relief was forthcoming from Ottawa. HBC personnel also expressed concern as they felt the government should be doing more to provide aid, thus lessening their own burden.

The population in the North-West felt threatened by the large number of incoming settlers from Ontario and the buying up of land by the colonization companies in the 1880's. The government had made agreements with these companies to bring settlers into the North-West. Without having secured titles to their lands, those people already established in the area (both Metis and white) were in a very precarious position. The river lot system of survey had been continued in areas where the Metis were farming, including the South Saskatchewan, Bow, Belly and Red Deer Rivers until early 1884 when the sectional survey was used,[34] the latter presenting a direct threat to the landholders in the Saskatchewan district.

Frustrations built up steadily as the pressure for land increased. In time their grievances and helplessness caused them to take drastic action as the petitions sent from the North-West to Ottawa were for the most part ignored.

> The frustration of Riel and the Metis and a group of English-speaking sympathisers in the Prince Albert district with the tardy action on land claims, the refusal to extend the river lot survey, and the failure to grant parliamentary representation was the root cause of the Rebellion. Edgar Dewdney, Laird's successor, did nothing

> to dispel the grievances except to suggest that the Metis could be pacified by a few thousand dollars spent on employment grading roads.[35]

At the beginning of July 1884, Louis Riel and his family returned to Canada from Montana at the request of Gabriel Dumont and other Metis spokesmen who had been sent to meet with Riel and urge his return. He found the Metis people of the North-West in a state of unrest over the failure of the Ottawa government to respond to their requests for deeds and title to their lands. The situation was reminiscent of that fifteen years before in the Red River area.

Numerous petitions were sent to Ottawa requesting surveys and patents for the land occupied by the Metis in the North-West. The need for a census of the Metis population was stressed. It was noted in many of the petitions that a migration took place from Manitoba which resulted in many Metis people from Red River not being included in the land grant programme there. The consensus expressed was that those who were missed should be enumerated as soon as possible in order for them to act on their entitlement. There were other concerns associated with these, including the need for assistance with the purchase of farm implements and seed, and more liberal hunting rights which would enable the Metis to procure enough game on which to subsist while establishing themselves in farming.

Three petitions originated in the Fort Qu'Appelle area in 1874, 1881 and 1882. The petitions cite the long occupation of the lands by the Metis, their tilling of the soil, the need for protection of their hunting and fishing rights, the building of roads, bridges, church and school buildings which they had accomplished, and the desire to secure their future on these lands. The last, in 1882, describes the threats facing them from the railway companies (such as the Ontario and Qu'Appelle Land Company). The Metis were informed that they would have to purchase the lands they occupied from the company or else vacate them.[36] For most, the payment was a financial impossibility.

In 1883 a petition was forwarded from St. Louis de Langevin settlement which clearly expresses the sense of frustration experienced in the North-West at this time. It stated in part:

> Many of us are here since the years 1873, 1874 and 1875; others, in still greater numbers, since 1880. Each and all of us took up our lands in accordance with the method formerly prevailing on the lands of the Red River and Assiniboine — that is to say — river lots.
>
> In the autumn of 1880 we petitioned the Minister of the Interior at Ottawa, for a special survey into river lots, as was granted to the Prince Albert Settlement, and to a portion of the St. Lawrence Settlement. . . .

> Since that date we have sent more petitions, at various times, for the same object. . . .
>
> Finally, Father Leduc, who had been sent as delegate to Ottawa by the people of Edmonton and St. Albert, showed us the answer of the Government promising a special survey for all located lands on the Saskatchewan. Since then we have waited in vain for the new survey.
>
> . . . many of us have occupied our lots long enough to entitle us to patents, and yet there has been no way, as yet, of getting them entered at your office.[37]

In time the patience of those submitting petitions and requests for action by the federal government wore thin. The return of Riel provided hope that the voice of the Metis people would be heard in Ottawa and that a redress of grievances would be forthcoming. Meetings were held during the remainder of 1884 and early in 1885. By February the settlers expressed the desire to have Riel as their leader and representative to government. On March 6, 1885, following numerous meetings and submissions to Ottawa, Riel held a meeting at which he proposed the establishment of a provisional government like the one in Red River before.

While he was taking time to pray and mull over the decision on the provisional government, word came that troops were being sent from Ottawa to arrest Riel. Acting quickly, the Metis rallied around Riel and seized control of Batoche in the middle of March. On the 19th, the establishment of the new Provisional Government of Saskatchewan was announced. Gabriel Dumont was selected to head the armed force.

In response to this newly declared government, troops were put together in Winnipeg, to be led by General Middleton, to assert the control of the Ottawa government and put down whatever disturbances might occur. A number of battles were fought in the spring of 1885, the results of which were to affect Metis destiny for many decades to come.

The first contact between the government troops and the Metis took place at Fish Creek in April. The Metis were led by Gabriel Dumont and withstood the government troops for two weeks. Dumont's skill in guerilla tactics were a key factor in the Metis' ability to resist as long as they did. The Indians in the area gave their support to Riel and Dumont. Battleford was burned to the ground by Poundmaker's men although its residents escaped harm. Big Bear's forces attacked Frog Lake, where some settlers were killed, and he and his men later took over Fort Pitt. The battle at Cut Knife Hill was fought in early May. The Indians, successfully led by Chiefs Poundmaker and Fine Day, forced the government troops to retreat.

The last battle of the Rebellion took place over a four-day period in May at the village of Batoche. The Metis forces were outnumbered by

about 700 government men and their supplies had been so drastically depleted that they were even low on bullets. Louis Riel and his men finally surrendered on May 15th, as did Poundmaker. Big Bear continued to resist until July, while Gabriel Dumont successfully escaped to the United States, where he remained for a number of years.

Aftermath of the North-West Rebellion

Following the 1885 Rebellion, the Metis people were disheartened to a much greater extent than they had been in 1870. In Red River, their efforts were in part rewarded by the passage of the *Manitoba Act* which incorporated many of their desires. In 1885 they experienced an unprecedented defeat with little to look forward to from the government. Their leaders were no longer able to fight for their cause. Dumont had fled to safety in the U.S. and Riel faced trial and execution. His trial dragged on during the summer of 1885 in Regina where he was imprisoned, while lawyers and doctors attempted to have him certified as insane in order to avoid the death sentence. Riel himself rejected these submissions on his behalf. Shortly before his hanging in Regina on November 16, 1885, Riel wrote these words:

I have devoted my life to my country. If it is necessary for the happiness of my country that I should now soon cease to live, I leave it to the Providence of my God.

Louis Riel.

Glenbow-Alberta Institute

This passage conveys both the strength and the final helplessness of a man whose life was devoted to the pursuit of justice for his people.

After 1885 there was a large migration of Metis people from the area where the battles occurred and the losses were most sorely felt. Many of the Saskatchewan Metis moved directly west (particularly the Lac La Biche area) while others migrated south into Montana and North Dakota.

The scrip programme which had originated in Manitoba in the previous decade was to re-appear in the North-West during the years 1885-87 and to continue into the early 1900's. The difficulties which accompanied the plan in Manitoba were to re-surface as well. An analysis of the scrip programme will be found in a later chapter in this volume.

Fig. 2.10 Gabriel Dumont, c. 1880's. Glenbow-Alberta Institute

Fig. 2.11 Louis Riel's Council outside Regina Courthouse, 1885.
Saskatchewan Archives Board

1. Johnny Sansregret
2. P. Paranteau
3. Pierre Gardieupui
4. Philip Garnot (Riel's Secretary)
5. Albert Monkman
6. Pierre Vandall
7. Baptiste Vandall
8. Touissant Lucier
9. Maxine Dubois
10. Timmus Short
11. ..... Tourond
12. Emmanuel Champagne

Fig 2.12 Graves of Metis who died at Batoche. Manitoba Archives

Fig 2.13 Metis of Lesser Slave Lake area building bridge, c. 1900-05. Glenbow-Alberta Institute

Fig 2.14 Frank Moberly (grandson of Henry John Moberly and of Colin Fraser), guide at Maligne Lake, 1920. Glenbow-Alberta Institute

Fig. 2.15 The Hudson's Bay Company store at Trout Lake, c. 1930's. Glenbow-Alberta Institute

THE METIS PEOPLE TODAY

Ethnic Identity

The Metis people of Alberta today represent a large and varied population characterized by shared Indian ancestry. As is the case in other prairie provinces and elsewhere in Canada, there is generally a stronger affinity for the Indian component than for the Non-Indian. The identity of the Metis remains inextricably linked to that of the Indian in spite of the artificial boundaries which have been created by government since the early days of treaty signing. The term "Metis" has come to embrace more people than those who are descendants of the historic Red River Metis. Many Non-Status Indians along with Metis people are today members of organizations which represent native peoples who are not Indians under the Indian Act. The names of the organizations themselves give an indication of the broad spectrum of people they represent — the Association of Metis and Non-Status Indians of Saskatchewan, the Manitoba Metis Federation, the Native Council of Prince Edward Island. What all of these people share is some degree of Indian ancestry and identity.

> It becomes obvious that when one speaks of the 'Metis', the 'Indians', the 'Non-Status Indians', or more inclusive, the 'native peoples' that one is not referring to a clearly defined bounded group, *except* under the terms of the *Indian Act*, but certainly not in any other realm of reality. . . .[38]

The terminology itself has served to compound an already complex issue — that of the definitions of the various categories of native peoples in Canada. What is clear and what has persisted in spite of many setbacks is a strong sense of Metis identity except in those areas where the native population is relatively small and for the most part assimilated.

Ties to Cree ancestry have remained strong in the northern and central areas of Alberta where the majority of the Metis population resides. In the more remote areas, such as the "isolated communities" north of Lesser Slave Lake,[39] Cree is still the most commonly used, everyday language. The significance of language maintenance in ethnic identification and survival cannot be over-emphasized.

Identity with the land and its resources is intimately tied to the sense of community and way of life. Identity with individual communities is strong, as is that with the surrounding areas. It is important to individuals and to their communities that the traditional modes of subsistence be maintained to some degree. The lifestyle in these communities remains heavily dependent on the traditional economic pursuits, particularly trapping. This is found to be true especially among the older residents.

In contrast, we have found that Metis identity in southern Alberta is not terribly strong. In families with a mixed Indian-white or Metis-white background, the white, or Euro-Canadian, side had tended to take precedence, resulting in a loss of Metis heritage. Relatively few Metis in the southern part of the province have played an active role in Metis organizations or activities and in many cases do not outwardly identify themselves as having Metis ancestry.[40] Farther south in Montana, the term *Metis* is almost unknown. The most common term used to designate people of mixed Indian-White ancestry in this area is "Landless Indians" (a term that would be quite appropriate to the Canadian Metis as well). In the past, kin ties were strong and trade routes well established between what is now southern Alberta and Montana. In time, many of these links broke down.

The Metis in Contemporary Alberta Society

The Metis of Alberta today are visible in numerous and varied occupations throughout the province. There is unfortunately a heavier representation in lower-paying, lower-status jobs than is desirable, but improvement is slowly being made in this area. Some Metis people have moved into professional positions in business, industry, teaching, nursing, social services, law and resource development. Others have chosen to carry on the tradition of a hunting and trapping subsistence, integrating these activities with wage labour on a seasonal basis.

In the political arena the Metis people have remained active. The work of organizing the Metis of Alberta[41] which was begun over fifty years ago by Joseph Dion, in conjunction with Jim Brady, Malcolm Norris, Peter Tomkins and Felix Calihoo (often referred to as the "Big Five"), has been carried on in recent years by other leaders of the Metis Association. In the 1960's through the efforts of Adrian Hope and Stan Daniels and their supporters the Association picked up momentum again.

Since 1928, the Association has had seven presidents. Joseph Dion remained in office from 1928 till 1958, a total of thirty years. Those following him included Jim McDonald (1959-61), Adrian Hope (1961-67), Stan Daniels (1967-71), James Ducharme (1971-72), Stan Daniels (1972-75), Ambroise Laboucane (1975-76), Stan Daniels (1976-79), and Sam Sinclair (1979-).

The Metis Association of Alberta had its start during the Depression years. The first leaders were active during the Ewing Commission hearings[42] and were instrumental in the creation of the Metis Settlements. The Association was registered under the Societies Act in the early 1960's and was able to embark on the development of new programmes when funds were made available by the federal and provincial governments.

Land issues and unsettled land claims re-surfaced as primary concerns. A Land Department was established and remained in existence for a few years, its purpose to assist with securing leases for lands for Metis people. Some initial Land Claims and Aboriginal Rights Research

was carried out in 1975-76 under the direction of Harry Daniels, currently president of the Native Council of Canada.

In 1978 funding was provided by the Department of Indian Affairs and Northern Development (DIAND) for the Metis Association of Alberta (along with the Native Council of Canada and other provincial Metis and Non-Status Indian organizations) to conduct "mutually acceptable" research into potential Metis land claims in Alberta. Though the Associations' contribution to decision-making was acknowledged in theory, in actuality it was DIAND that controlled the nature and course of the research. The contract devised was limited in scope and restrictive in terms of permissable alterations.

A pilot project was funded for three months in early 1978, which was followed by a nine-month study (July 1978-March 1979). The interim period (May-June 1978) was taken up with negotiations and the development of a contract. The research undertaken during the nine months was directed towards five major areas:

1. The origins (migration and settlement patterns) of the Metis of Alberta.

2. The impact of government policies and legislation on the Alberta Metis population.

3. A review and analysis of federal government policies relating to the admission and release of Metis from Treaties 6 and 8.

4. Land transactions (including scrip) in various communities.

5. An analysis of secondary research sources.[43]

In 1979 the Land Claims Research Project was re-funded by DIAND for a period of one year. This project was a continuation of the previous year's research, in addition to an expansion into new directions. While the 1978-79 research and final report were focussed on the northern part of the province, the 1979-80 work included more research specifically concentrated on the central and southern areas. The field work was based in two regions, the seven "isolated communities" north of Lesser Slave Lake and the Pincher Creek district of southern Alberta.[44]

Once the DIAND funding for Land Claims Research ceased, the Metis Association turned to other sources, including the Alberta Law Foundation and the Secretary of State. The provincial government of Alberta is, by its own admission, reluctant to fund actual land claims research. The reasons for this are obvious. In spite of the setbacks in our funding, the Metis Association of Alberta will continue to press for recognition of the rights (both human rights and land rights) of the

Metis and Non-Status Indian people of Alberta as it has done in the past. As Sam Sinclair, president of the MAA, stated in 1980:

> We have been funded by the federal government for these two years and now that our work is moving into a new and more meaningful phase, our funding has been terminated. . . . We intend to fully develop a comprehensive claim to assert our rights, and we will continue to do this with or without government support.[45]

It is the intention of the Metis Association of Alberta to pursue its work, particularly in the area of land claims, in the spirit of the "Big Five" and of Riel before them, for the betterment of the Metis and Non-Status Indian people in Alberta.

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3
ABORIGINAL TITLE

"Aboriginal Title" is one of the most misunderstood concepts in Canada today. The term is always being discussed on television, radio, and in newspapers, but it is rarely defined by those using it, and it is rarely used in any precise sense. It is extremely important that the Metis people have a clear idea of how Aboriginal Title is defined in law, and how it was developed through time, because when government leaders and officials use the term, they often use it in quite a different manner than do native people and their representatives. It is particularly important to have a clear understanding of this concept when the time comes for the Metis to decide how their case should be presented to the government, and what demands have to be made.

In actuality, aboriginal rights are very narrowly defined, and give a very limited claim to any rights over land. And, most importantly, *it is not a definition that Native people themselves have developed.* It is a definition that has come from European culture rather than any indigenous one, and it developed in the context of international law and British law. Aboriginal rights as defined by British law centers around the fact these rights can be *extinguished*, that is, they can be taken away. Many native people have indicated that they want something that defines their relationship with the land much more comprehensively, and in a way that cannot be so easily alienated.

THE EARLY DEVELOPMENT OF THE CONCEPT OF ABORIGINAL TITLE

The Colonial Background

The major concepts of Aboriginal Title developed in the context of colonialism, as France, Portugal, Spain, England, Holland and other European countries began exploring the "New World" in search of unoccupied territories which would yield resources and wealth to bolster the home country's economy. However, no territory that they discovered was actually unoccupied.

Contrary to popular belief, the idea of denying sovereignty to aboriginal peoples, that is, refusing to recognise their rights to the territory they occupied, is a relatively recent phenomenon.[1] For over three and a half centuries of exploration, there was a general recognition that the aboriginal peoples encountered in various parts of

the New World owned and governed their own territories. A moment's reflection will show us why this was so. When Europeans first set foot on these shores, they were greatly outnumbered, and did not possess the knowledge or skills necessary to successfully deal with the new environment on their own. They were, in fact, dependent upon the native people for their very survival. Under these circumstances, it would have been very difficult to act as if the native people had no rights to the territory they occupied.

The recognised legal practice of the time stated that people settling on unoccupied territory had the right to develop their own system of government, as well as their own religion, nationality, customs, laws, and education; and that they had a right to their own personal property. These rights, particularly the right to personal property and to occupy their own territory could not be arbitrarily taken away from them. European countries began considering ways to occupy these territories with some semblance of legality and recognition of the rights of the original inhabitants, if for no other reason than that back in the home country many influential clerics and jurists were beginning to question the legal and moral justification of seizing territory that was already in the hands of others.

Thus the concept which we now refer to as aboriginal rights began to emerge. It did not spring up fully formed, but evolved little by little through trial and error, by different colonizing countries in their relations with various indigenous peoples. But it was essentially developed as a justification and means of seizing the land of indigenous people in various parts of the world and it is hardly surprising that the rights it recognises, and the duties it imposes on the dominant or colonizing country are extremely limited.

To fully understand the rationale behind the recognition of aboriginal rights, one must keep in mind the basic reason why colonies were wanted by Britain, France, Spain and others in the first place. There were gigantic profits to be made. Claiming new territories simultaneously produced a source of raw materials and developed new markets. Any wealth generated in the colonies was used to further the development of the European countries rather than the lands and economies of the colonies. The colonies not only produced the raw materials, they were a captive market for the manufactured goods of the mother country, and they were forced to buy these goods at prices well over the world-market rate.

As can be imagined, profit was huge at both ends of the colonial chain, but the administration of colonies required strict control over the land, resources and people of the area. None of the major colonizing countries had any intention of allowing this profit to be endangered by any prior claims of aboriginal peoples in the areas they wished to colonize.

The structures which were developed to extinguish the prior claims of the indigenous people and to control the colonies and their inhabitants varied from region to region, and from one colonizing

country to another. But several of the colonizing countries began developing a concept of aboriginal title as part of these activities. Spain is generally regarded as the first country to consider what rights, if any, aboriginal people enjoyed. Other countries, for example Portugal and France, did not give the matter much thought, but merely seized what territory they could, without worrying about the rights of the current inhabitants.

But whether or not there was any concern shown for the current inhabitants, there was a considerable concern shown for gaining valid title to those new territories in terms that would be recognized by rival colonizing countries. An international law developed wherein "discovery" of a new territory gave the claiming country the exclusive right to keep other European countries out of these territories. Of course, this agreement only bound those European countries that had agreed to be a party to it. It could not, and did not, affect the rights of those people already inhabiting the land in question.

To justify their claim, the European countries had to be able to demonstrate to other members of the European family of nations that they had extinguished any prior claims. The practice was that any uninhabited territory was open to occupation by whichever country made the first claim, but that occupied territory could only be acquired by *cession* (either freely made by the inhabitants or under the threat of war) or by *conquest*.[2]

Thus, the first commission of Ferdinand and Isabella to Columbus, dated April 30, 1492, gave Columbus the right to "discover and *subdue* some Islands and Continents in the Ocean" (emphasis added). England and France also granted commissions which clearly recognize that cession from or conquest of the natives of America were the only alternatives open to acquiring the territory. Thus, the European powers recognized from the beginning that the parts of the American continent which they wished to occupy already had owners, and that the acquisition of these territories was dependent on a limited number of options.

Theoretically, the colonizers could have ignored this problem if the inhabitants were "uncivilised", and possessed no political organization, because it would then be impossible to deal with them collectively in any rational manner. However, this was not possible if the inhabitants exhibited a collective political activity that demonstrated some elements of permanence, no matter how simple or rudimentary that organization might appear to be. This requirement of a permanent political organization has again become a significant factor in some recent cases on aboriginal rights.[3]

Thus, it was to the colonizers' advantage to assume that the native people were subhuman, irrational and living in a state of anarchy, with no form of self-government, because if this were so, it could be said that they were incapable of putting forth a legitimate claim to the territories they were occupying. Many people indeed took this point of view, and this set off a long series of debates in Spain as to the nature of these people and their relationship to the land.

A Spanish theologian, Franciscus a Vitoria, in the early part of the sixteenth century, gave several important lectures on the question of Indian rights, in which he asserted that the Indians were the true owners of the land, and Spain had no claim to the land of the New World through discovery, because that doctrine only applied to unoccupied lands.[4] He said the Spaniards had acquired no more right to the lands of the New World than the natives would have acquired if they had discovered Spain. However, he agreed that if it could be demonstrated that the Indians were incapable of forming a state, the King of Spain could claim sovereignty over the natives "in their own interest" in order to raise them to a higher level of civilization.

He was later supported by another jurist and theologian, Las Casas, who in a famous series of debates with Dr. Sepulvida, maintained that the American Indians were rational beings, on the same level as the Egyptians, Romans and Greeks, and that the taking of lands from them was unlawful and unjust.[5] This question was of special interest to the Church, since theologians wanted to know if these people were fit to be converted.

The debates between Sepulvida and Las Casas led to Pope Paul III issuing a Papal Bull in 1537 which stated in part:

> . . . Indians are truly men . . . they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and of no effect.[6]

The laws of Spain were thereafter structured to provide for the protection of Indian rights and the protection of Indian lands.

However, this recognition caused some problems for the Spanish since it meant that the colonies could only be legitimately created while respecting the full rights of the original inhabitants; an obvious impossibility. This was why there was so much interest in the debates over the rights of the natives of the New World. But the recognition of these rights did not have much ultimate benefit; the aboriginal people were conquered and exploited with very little concern shown for the laws Spain eventually provided for their protection.

This issue continued to be of concern to theologians for many years. Even in the 19th century, the questioning of the legitimacy of the Spanish conquest continued. Fr. Servando Teresa de Mier, a radical Dominican, asserted that the entire colonial structure was an illegal domination and a usurpation of natural rights. His teachings led to one of the early revolutions in Mexico. The Indians, Mier stated, "were the ancient and legitimate owners of the country, whom an iniquitous Conquest had been unable to deprive of their rights."[7]

The question of aboriginal rights did not develop uniformly from country to country. For example, France made no concessions towards the rights of indigenous people; they simply took over the territory and

controlled it completely. They did not indulge in any long debates about the nature of the original inhabitants. An Indian, once Gallicized and Catholicized, achieved legal equality with the French citizen.[8] However, until they achieved this right to French citizenship, no recognition of any title to the land was given; it was simply assumed that the land became part of France as soon as it was claimed.

An interesting analysis of why France did not concern itself with the definition of aboriginal title has been made in Cumming and Mickenberg.[9] The main reason they advance is that there was no conflict between Indians and France over land. The only economic interest France had in New France was the fur trade, and this required almost no formal acquisition of lands. The natives were simply encouraged to bring in furs for trade; little attempt was made to dominate them by force. However, this non-recognition in no way nullifies the concept that people inhabiting their lands "from time immemorial" have an aboriginal title to this land.

In marked contrast to France, and with a different emphasis than Spain, Great Britain began developing its own concept of aboriginal title as it continued its colonial expansion. This development was mainly a matter of pragmatics; the British recognized early on that it was simply more expedient to recognize a limited claim on the part of native people, and to pay them for it, than to wage war on them and displace them strictly by force.[10]

Aboriginal rights, as it eventually came to be developed and recognized by the British, significantly limited the rights accruing to the original inhabitants. It took a long time to develop fully. One of the earliest recognitions of the fact that the native people held title to the land at all was in the Charter of the Massachusetts Bay Company in 1629:

> Above all we pray you . . . if any of the savages pretend right of inheritance to all or any part of the lands granted in our patent we pray you endeavor to purchase their title, that we may avoid the least scruple of intrusion.[11]

The operative word here is "pretend", that is, if they claim title. There is no assumption on the part of the British at this time that there automatically was a title to be recognized, nor that the natives would automatically proclaim this title.

Up until around 1760, the Crown permitted private purchase of Indian lands, in much the same manner as that indicated in the Charter of the Massachusetts Bay Company. However, westward expansion from New England was causing discontent among the Indians. There was a lack of consistent policy about land purchases, as each colony was permitted to handle the problem on its own, and this was resulting in a loss of the friendship of the Indian tribes. In 1754 the British Board of Trade called the "Albany Congress" in an attempt to develop a

consistent land policy. This failed to bring about the desired result and after a few more years of trouble, when it became obvious the Indians were about to form an alliance with the French, Britain decided to take over the matter of Indian lands itself.

The resultant policy is best expressed in the Royal Proclamation of 1763. While the Proclamation was mainly concerned with governing the territories acquired from France, a large part of it was dedicated to the announcement of Britain's policy with respect to Indians and their lands. These policies were not new, they were merely a continuation of the policies the British had followed since 1754.

The Proclamation makes it clear that the indigenous people have various lands "reserved" for them; land that has *not yet* been ceded to or purchased by the Government. It clearly envisions further acquisition of land in such phrases as "until our further Pleasure be known" in the description of the areas reserved for Indians. In effect, *the Crown has already claimed all the lands of the territory*, it only has to purchase it from the Indians "at our pleasure", and *only* the Crown can purchase it.

So the major concession to the recognition of aboriginal title made by the Royal Proclamation was the right of the natives to sell their land to the Government; the right, in other words, to have their aboriginal title extinguished. There was no recognition of their right to refuse to sell. It is ironic that this charter is what has often been referred to as the "Indian Charter of Rights".

No rights of the native people other than the right to cede their land to the Crown were recognized. There was no recognition of the indigenous people's right to their own government, their own religion, their own culture. The Proclamation showed how, along with the concept of Aboriginal Title, the British Government developed the idea of *extinguishment*; that is, taking possession of the land. It could be done by legislation, or by treaty.

The Royal Proclamation also made it clear that all agreements between the Indians and the Crown had to be made publicly, with the terms spelled out for all to hear. While this sounds quite laudable, it must be remembered that these treaties were conducted between a literate people on the one hand, and non-literate people on the other. This left a very clear advantage with the government. In essence, anything could be promised at these public hearings, but the only record of the event was a written one, which only one side could understand. Yet the other side had to sign, and there have often been situations where the Native people have claimed that what they were told and what they signed were two different things.

Early Court Cases

The final development of aboriginal title as it is understood today came in several important court cases which were held in the 1800's both in Canada and the United States. These historic court cases not only helped to clarify the exact nature of aboriginal rights, but were

also instrumental in determining some important limitations to the nature of aboriginal title itself. The decisions taken back then have had repercussions to the present day. Two of these cases were heard in the United States Supreme Court; *Johnson v. M'Intosh* in 1823 and *Worcester v. Georgia* in 1832. The other significant cases are Canadian, the most important one perhaps being the St. Catherine's Milling case of 1889. Together, these cases, plus a few others, form an essential source for any discussion of the nature of aboriginal title as it is recognized in Canada.

The American cases were instrumental in clarifying what was meant by the doctrine of discovery. The doctrine was primarily an agreement among the various European Nations that they would respect each other's claims in the New World; it was a device to limit competition among themselves. "Discovery" gave them the exclusive right to purchase the land from the original inhabitants. It did not annul the rights of the original owners who were *not* a party to the doctrine of discovery:

> It regulated the right given by discovery among the European discoverers, but it could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man.[12]

But these cases were also instrumental in reifying the limitation of aboriginal title that was inherent in the Royal Proclamation. This is particularly evident in *Johnson v. M'Intosh*, a case involving an individual who had acquired land from the chief of a particular Indian tribe, only to find subsequently that his title could not be recognized in the courts of the United States. In coming to its decision, the United States Supreme Court had recourse to the Royal Proclamation of 1763 and held that only the Crown or state had the ability to transfer or extinguish Indian title. This conception of Indian title, as expressed by Chief Justice Marshall, states:

> All our institutions recognize the absolute title of the crown subject only to the Indian right of occupancy, and recognized the absolute title of the Crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.[13]

In other words, the Indians had possession of the land, but the Crown had the title. This is a succinct definition of Indian title as recognized in the Royal Proclamation, and this interpretation has had some effects on Canadian cases as well. According to this definition, as far as the Crown was concerned the Indians could not transfer their rights in the land to anyone they pleased, but had to cede these rights to the Crown, which could in turn transfer title to individuals as was deemed desirable.

Chief Justice Marshall freely conceded that this gave the native people a restrictive title, and even one which might be "opposed to natural right and to the usages of civilized nations."[14] However, he felt that prevailing circumstances made this necessary.[15] This case still remains as one of the most important precedents in aboriginal rights in Canada as well as the United States.

While the decision reinforces the concept that indigenous people have a legally recognized property right, it severely restricts Indian title, limiting it to a right of use and occupancy ("usufructuary rights" as it was to be later characterized in Canada) making it vulnerable to forcible extinguishment, and denying the Indian owners the right of complete alienability.

However, in Canada this relatively simple position was complicated by federal-provincial regulations regarding jurisdiction over land. This is best illustrated by the St. Catherine's Milling case, essentially a dispute between Ontario and Ottawa over the control of the territory in the northwest portion of the province, around the present-day town of Dryden. The federal government had issued a timber license to the company ten years after the government had obtained the extinguishment of the aboriginal title of the Ojibway Indians living in the area. Ontario challenged the federal government's right to do this, and the finding of the courts, at all levels of appeal, was that after Canada had obtained the extinguishment of Indian Title, the Territory reverted to the province, since it no longer came under the definition of "lands reserved for Indians" as defined in the *BNA Act.*

The details of the conflict between Ontario and Canada need not concern us here, because the situation is quite different in the Prairie provinces. Prior to 1930, all the natural resources of Manitoba, Saskatchewan and Alberta remained under federal control, and there was therefore little opportunity for conflict over control of the resources of the territory after Indian title had been extinguished. Even after the provinces gained control over resources, the federal government retained its power over lands already set aside as reserves, as well as future reserves through special legislation designed to prevent a recurrence of the circumstances peculiar to the St. Catherine's case.

However, the St. Catherine's case is interesting because at all levels of appeal there are to be found long, detailed, and often conflicting discourses on aboriginal title, which reveal just how the concept as we now know it was developed in the courts. It was here that aboriginal rights was first described in terms of usufructuary rights, a concept which Henderson has characterised as obscurantist, shrouded in mysticism, inappropriate to the modern situation, pejorative and unnecessary.[16]

In the Ontario court, the question of whether the Royal Proclamation still held as far as Indian lands was concerned was broached:

> . . . but as indicating for this century the scope of the Indian reservations, or the intent with which they have been created under provincial rule, it must be regarded as obsolete.[17]

However, the Supreme Court noted that the Royal Proclamation was not obsolete; it had the force of a statute and has never been repealed. The final ruling as handed down by Lord Watson decided that the Indian interest derived solely from the Royal Proclamation, and that Indian title was "a personal and usufructuary right, dependent upon the good will of the sovereign."[18] This case, especially in its introduction of the concept of usufruct, has had some profound (and limiting) effects on the understanding and perception of aboriginal title and modern land claims.

It is unlikely that the Metis Association of Alberta, or any of the other native organizations in this country can really be satisfied with the recognition of their rights based on such arbitrary and limited definitions. This is not in keeping with the native people's own understanding of the ownership and the rights they had held in the land.

To clarify this point, we will now turn to some of the more recent developments in the evolution of aboriginal title, considering in turn the present-day attitudes of the government, native people, and the courts to the meaning of aboriginal title.

CONTEMPORARY GOVERNMENT ATTITUDES TOWARDS ABORIGINAL RIGHTS

The issue of aboriginal rights and what these entail began to resurface in the mid-60's as native political organizations, both status and non-status, began to press for recognition of these rights. The impetus for this was two-fold; first, the mid-60's was a time for political reawakening of the native peoples across Canada, as provincial organizations such as the Metis Association of Alberta, the Manitoba Indian Brotherhood and others either began to revitalize or become newly organized. Second, increased inroads into northern Canada by oil and mineral exploration, hydro-electric projects, etc., brought home to many native people the need for protecting their land rights before these were irretrievably lost, or before irreparable harm was done to the ecology. The two conditions were mutually reinforcing; at the very time native people began to develop a new political ability, one of their greatest challenges developed which required the most sophisticated knowledge of the Canadian political system, and their knowledge grew to meet this demand.

It is true that in some cases, like the Nishga land claim, negotiations and claims had been pressed more or less continuously since the beginning of the 20th century, but for the most part this sudden

resurgence of land claims came as something new and something of a shock, not only to the public, but to the government as well.

It cannot be said that the government handled this new development with any amount of finesse. In fact, its initial reaction was no more informed or sophisticated than that of the general public. The initial reaction of the "man on the street" was an automatic disbelief that aboriginal rights existed or had any validity in law. This was hardly a surprising reaction, since Indian claims and treaties were generally thought of as a long-dead part of history, and were generally treated in Canadian history texts (when considered at all) as a closed issue. Although this reaction might have been expected from the general public, it should hardly have been the reaction of the federal government, which had vast resources for research at hand, and had been actively engaged in extinguishing aboriginal title less than 50 years previously.

But basically, that reaction was all the government had to offer. On August 8th, 1969, Prime Minister Trudeau, in discussing the policy paper which became known as the White Paper, had this to say:

> . . . well one of the things the Indian bands often refer to are their aboriginal rights and in our policy, the way we propose it, we say we won't recognize aboriginal rights. We will recognize treaty rights . . . But aboriginal rights, this really means saying "We were here before you. You came and took the land from us, and perhaps you cheated us by giving us some worthless things in return for vast expanses of land and we want to re-open this question. We want you to preserve our aboriginal rights and to restore them to us." And our answer . . . is "no."[19]

But as Trudeau and the Liberal government discovered as opposition to the proposals in the White Paper grew and grew, it wasn't going to be so easy. They weren't going to get away with simply saying "no".

In some ways, it was not all that surprising that the government attempted to deny the concept of aboriginal rights. There was an incredible dearth of knowledge about the subject both on the government's side and on the legal profession's. It was not until the emergence of the first edition of *Native Rights in Canada*, researched and written for the Indian-Eskimo Association of Canada, that much was generally known on the subject. With the emergence of the second edition, edited by Cumming and Mickenberg, there was at last a collection of data which outlined, in unemotional and straightforward terms, just what the nature and parameters of aboriginal rights really were. Before this, there was almost nothing known, and no generally available source material on the subject.

This material has had a profound effect on the way aboriginal rights is perceived by the legal profession, but even today very little is known on the subject. A common reaction from lawyers is still that "there is no such thing as aboriginal rights," and this reaction even came from a lawyer who was working with the Metis Association of Alberta during some earlier stages of land claims research. It was not until he had been presented with a copy of *Native Rights in Canada* that he could be convinced otherwise!

The federal government quickly backed down from the proposals it made in the White Paper, but it still refused to be forced into officially recognizing aboriginal rights. On March 29, 1973, the National Indian Brotherhood attempted to get the government to officially change its stance, and introduced a statement on aboriginal title to the Standing Committee on Indian Affairs and Northern Development. In this presentation they did not consider compensation or settlement, they simply pressed one question — would the government recognize the concept of aboriginal title?

The NIB tried to get the government to agree to recognise aboriginal rights by using a rather watered-down version, which they presumably felt would be more acceptable to the government. They grudgingly accepted the concept of usufruct in their definition:

> Indian title as defined by English law connotes rights as complete as that of a full owner of property with one major limitation. The tribe could not transfer its title; it could only agree to surrender or limit its right to use the land. English law describes Indian title as a right to use and exploit all the economic potential of the land and the waters adjacent thereto, including game, produce, minerals and all other natural resources, and water, riparian, foreshore, and off-shore rights. The colonial legal systems called this kind of title a "usufructuary right." To the extent that the use of the concept of "usufructuary right" limited Indian rights as had been understood by the Indian peoples it was an arbitrary and self-serving action of the colonial legal system.[20]

The NIB was at least partially successful, in that they convinced the Standing Committee to accept the concept. In a report to the House presented on April 4, 1973, the Committee stated:

> Your Committee accepts and endorses the concept of Aboriginal Title as set out in the paper entitled, "Aboriginal Title" presented to the Committee by Mr. George Manuel, President of the National Indian Brotherhood, on Thursday, March 29, 1973, and urges the Prime Minister, on behalf of the Government of Canada, to

> publicly accept and endorse the said concept of Aboriginal Title, and to take steps immediately to enter into negotiations with the Indian people with respect to the said title.

However, this recommendation was not accepted by the House. It was debated on April 11, 1973, then defeated April 18.

But interestingly enough, the government had already moved far past its original position of totally refusing to recognise aboriginal title. In January 1973 the Supreme Court of Canada had handed down its decision on the Nishga land claim in British Columbia. The case was decided against the Nishga, but the seven judges had divided four to three on the issue, and six of the judges had accepted a limited concept of aboriginal title. While this court case did not resolve the issue of whether aboriginal rights have any legal force, it at least gave the concept some validity, and caused a reversal in attitude on the part of the government. In an oft-quoted statement, Prime Minister Trudeau said to the Union of British Columbia Indian Chiefs, "Perhaps you have more legal rights than we thought you had when we did the White Paper."[21]

There was further evidence of this new attitude the same year, in the government's response to a paper presented by the Yukon Native Brotherhood: *Together Today for our Children Tomorrow*. This paper was a proposal for the negotiation and settlement of land claims of the Status and Non-Status Indians of the Yukon. On February 14th, 1973, the Prime Minister publicly agreed to the proposal and to the setting up of a negotiating committee. Thus the Government had, in effect, reversed its position on native title although still balking at offering any formal recognition.[22]

This enabled Jean Chretien, then Minister of DIAND, to accuse the opposition of not knowing the government's position had changed with respect to aboriginal title during the debate over the Standing Committee's recommendation.[23]

This new attitude of the government was made even more explicit in a policy statement released on August 8, 1973, outlining the government's position on aboriginal title and land claims negotiations. After reiterating the government's willingness to honor all past commitments, the policy went on to set out the government's new plans to negotiate with native peoples in areas where aboriginal rights had not yet been extinguished:

> The present statement is concerned with claims and proposals for the settlement of long-standing grievances. These claims come from groups of Indian people who have not entered into Treaty relationship with the Crown. They find their basis in what is variously described as "Indian Title", "Aboriginal Title", "Original Title", "Native Title", or "Usufructuary Rights". In

> essence, these claims relate to the loss of traditional use and occupancy of lands in certain parts of Canada where Indian title was never extinguished by treaty or superseded by law. . . . The Government has been fully aware that the claims are not only for money and land, but involve the loss of a way of life.
>
> It is basic to the position of the Government that these claims must be settled and that the most promising avenue to settlement is through negotiation. It is envisaged that by this means agreements will be reached with groups of the Indian and Inuit people concerned and that these agreements will be enshrined in legislation, enacted by Parliament, so that they will have the finality and binding force of law. The Government is now ready to negotiate with authorized representatives of these native peoples on the basis that where their traditional interest in the lands concerned can be established, an agreed form of compensation or benefit will be provided to native peoples in return for their interest.[24]

The policy statement went on to note that some of the lands in question were now under provincial jurisdiction, and that settlements here could only be satisfactorily reached with the co-operation of the provincial governments concerned. It urged them to take part in the negotiations envisaged.

It was also recognized that a great deal of flexibility was going to be necessary if all the variations in land claims across Canada were to be handled adequately. The policy paper specifically mentioned the Nishga land case, the Union of British Columbia Chiefs' claim, Northern Quebec and James Bay (at that time the matter was before the courts) the Yukon Indian Brotherhood's claim, and the Inuit claim in the N.W.T. The government also acknowledged the possibility that there might be some claims in southern Quebec and the Atlantic provinces (although of a different nature) and expressed a willingness to provide funds for research there as well.

However, there were still some questions left unanswered. Native leaders in the non-treaty areas expressed concern that the policy was heavily oriented towards the extinguishment of existing rights and provision of compensation. Many leaders favored a system which reinforced aboriginal rights, and offered the native people more control over their territories, rather than have these rights extinguished for compensation, no matter how generous that compensation might be.

Secondly, the policy did not deal with areas already under treaty, where some native people felt their aboriginal rights had either not been properly extinguished (and so possibly still existed) or where they had not been properly compensated for. The government's policy in

that regard was that all aboriginal rights had been extinguished in those areas which came under treaty. This assumption also covered the Metis, and did not deal with their claims that the distribution of land and scrip was unjustly administered, or was insufficient to compensate for aboriginal title.

However, there was some recognition of the special problems of the Metis from other sources. The same Standing Committee on Indian Affairs and Northern Development that had recommended recognition of Aboriginal Title also submitted the following report to the House, on April 4, 1973:

> Your Committee recommends to the House that adequate funding be made available immediately to the Non-Status Indian and Metis associations of Canada for the purpose of enabling those associations to research the matter of aboriginal title as it relates to the Non-Status Indians and Metis of Canada and that the Government of Canada negotiate a settlement of any claims of such Non-Status Indians and Metis forthwith upon the completion of the said research.

This report suffered the same fate as the one recommending recognition of aboriginal title. However, there were encouraging signs that the Metis' claims on the prairie were beginning to be heard. Their case was undoubtably strengthened by the inclusion of Metis and Non-Status Indians claims in the Yukon and the North West Territories, which was in turn based on the claim that Metis are Indians under the terms of the *BNA Act*, even if they are not included under the *Indian Act*.

Repeated lobbying by provincial and national Metis organizations began to have its effect on government policy. One of the results was formulated in a widely-leaked cabinet document prepared in May, 1976, by an inter-departmental group, including the Departments of Indian Affairs and Northern Development, Secretary of State, Justice, the Treasury Board Secretariat, Federal-Provincial Relations Office and the Prime Minister's Office. This document was designed "to consider federal policy towards native people in general and towards non-status Indians and Metis in particular."

Among its conclusions, the Steering Group stated:

> — the *Indian Act* which defines the Indian people to whom the federal government addresses special programs is in some ways arbitrary, anachronistic and harsh in excluding certain classes of individuals;
> — the non-status Indians and Metis may have legal claims against the federal government and some provinces and this might be tested in the courts at any time.

Implicit throughout this document is the assumption that there is such a thing as aboriginal title, but following previous government practice, nowhere is there any official admission that such a thing really exists nor is there a definition of it. The steering committee then managed to recommend that recognition of this "non-item" be extended to non-status Indians as well by urging the Cabinet to:

> Accept the prima facie evidence that there exists a class of native people outside the *Indian Act* that may have justifiable claim to "aboriginal title", without *ipso facto* accepting that that class can be identified or that their claims can in general, be validated.

The other significant feature of this document for Metis people was the recommendation that the government agree to provide funding, "on a mutually acceptable basis", to Non-Status Indian and Metis organizations to research legal claims. This recommendation was eventually implemented, and research monies were provided for a period of two years for many of the Non-Status Indian organizations across Canada, including the Metis Association of Alberta. Much of the data in the present publication was originally gathered under this program.

In the contracts that were signed to do this research, the government was very careful to stipulate that the agreement to fund the research was in no way an admission that they recognized any of the potential claims of the Metis, only that they were willing to explore the possibility that these claims might have some validity.

Now that much of the land claims research has been completed, and the government has discontinued funding, it is interesting to note that no action was taken on a further recommendation of the document, that of developing:

> . . . a possible process for . . . validating *and settling* the various classes of aboriginal claims that might be brought by Non-Status people (emphasis added).

The National Indian Brotherhood was bitterly opposed to many of the precepts mentioned in this document, particularly with regard to DIAND funding for Non-Status Indians and the blurring of the distinction between Status and Non-Status Indians and Metis as indicated therein.[25] The NIB lobbied vigorously against the document for many years, and many of the ideas in it have since been dropped (at least officially) by the government. However, some of the concepts were at least responsible for the extensive two-year commitment to land claims research for the Metis made by the Department of Indian Affairs.

Aboriginal rights were finally given an official as well as *de facto* recognition as a result of the program of constitutional reform instituted by the Liberals in 1980. The Committee charged with considering

amendments to the Canadian Constitution prior to patriation had, by January 31, 1981, agreed to give unequivocal recognition to aboriginal rights, and defined "aboriginal peoples" as including the Indian, Inuit and Metis peoples of Canada. While this is certainly an encouraging development, it should be remembered that there was no attempt made to define aboriginal rights in any manner whatsoever. The constitutional package was passed by the Commons on April 22, 1981.

The inclusion of the Metis in the definition of aboriginal peoples was not without its controversy. In a move reminiscent of NIB's reaction to the 1976 Cabinet document on an over-all policy towards Native people, the Indian Association of Alberta went on record as being opposed to the proposed amendments to the Canadian constitution, stating that any recognition provided to Canada's Metis population would compromise the rights of Treaty Indians. They bitterly condemned the National Indian Brotherhood and its president Del Riley for "selling out" to the federal government on the constitution. They also felt the proposed amendments for recognition of their rights were totally inadequate — some saying they wanted Britain to administer the treaties, some wanting a completely separate Indian "nation", and some favoring entrenched treaty rights and Indian participation in any amending formula.[26]

Whatever the merits of their objections to the proposed amendments in the patriation bill, there appears to be little substance to their suggestion that recognition of the aboriginal rights of the Metis would injure treaty rights; Metis aboriginal rights are a totally separate issue from status treaty rights.

There is, of course, a strong case for asserting aboriginal rights for the Metis. Not only can Metis be considered Indians under the terms of the *BNA Act*, but there is a long history of recognition of these rights in Canadian government — both the *Manitoba Act* and the *Dominion Lands Act* refer to Metis claims to aboriginal title. But this does not affect treaty rights. Treaties were the government's response to Indian claims, and half-breed grants (in the form of scrip) were the response to Metis claims. The Metis claims in the prairie will be based on the injustices and inadequacies of the scrip system as it was originally administered, but there is no move on the part of the Metis to either join treaties or to sign new treaties with the government. Historically the Metis have preferred to avoid any sort of dependency relationship with the government as implied under the Indian treaties, and will probably continue this preference in the future.

At any rate, the patriation controversy has resulted in an official recognition of aboriginal rights, the first time this has been tendered by a Canadian government in many years. Whatever other advantages are ultimately derived from this, it can at least be said that Canadian native people have come a long way since 1969, when Prime Minister Trudeau was prepared to respond to a demand for recognition with a simple and unequivocal "no."

METIS ATTITUDES AND CONCEPTS REGARDING ABORIGINAL RIGHTS

Historical Concepts

It is sometimes difficult to remember, as one observes the passionate defence of aboriginal rights exhibited by today's native leaders, that aboriginal title, especially in the form recognized today in the courts, is not originally a native concept. Historically, the notion originated with Europeans, and was developed as a mechanism for gaining "legal" title to newly-discovered territory (legal, that is, in the eyes of the European Family of Nations). But the concept also began to be borrowed and adapted by various native people at different times in the history of North America, as a means of dealing with European encroachment into their territory, and as one means of resistance towards European advancement.

Today, it is still often used by native leaders in the same sense as it was originally adopted by native people years ago. That is, it is not adopted because they believe and accept the limited premises of aboriginal title. It is adopted because *the dominant society accepts these premises, and is sometimes prepared to act on them*, albeit with a lot of prodding. The most obvious example in recent years is the case already mentioned of the Union of British Columbia Indian Chiefs. They accepted the limiting concept of "usufruct" in a fruitless attempt at persuading the federal government to officially recognise the concept of Aboriginal Title. However, they did so with the full understanding that it was the "self-serving" definition of the dominant society, and with the recognition that this limited concept was likely the most they could persuade the government to accept. And as we have seen, they weren't able to get acceptance of the concept even after that major concession.

Because of the long history of the subject and the fact that while some native groups have used it since the early 1880's, others have not picked it up until the late 1960's, it is not surprising that there presently exists a broad spectrum of positions on aboriginal rights of contemporary native people in Canada reflecting this multi-linear historical development. Local conditions, contemporary governmental administrations, geographical location, tribal traditions, etc., have all had some input into the way aboriginal title is now being perceived.

The Metis concept of aboriginal title, for example, has had quite a different historical development than that of some of the Indian groups around them and these differences are reflected today in their sometimes opposing interpretations and attitudes towards aboriginal title. This section is concerned with describing that development. While some reference will be made to other native groups, the history of the Metis attitude will be stressed. A really comprehensive study of all the paths leading to the contemporary versions of aboriginal title would be worthy of an entire volume in itself.

The Metis' concept of aboriginal title and the history of their dealings with the government has, generally speaking, been freer from the dependency that characterised the relationships that the Indians entered into with Canada. This was partly a matter of choice and partly a product of their social organization. The Metis were generally not interested in living on reserves, or under the authority of some government department. With one or two exceptions, Metis entered into no treaties with Canada, and their land was awarded on an individual basis. However, part of this tradition was based on unilateral decisions of Canada which refused to deal with the Metis as a distinct aboriginal unit existing over time. This refusal to recognize the national identity of the Metis was responsible for much of the unfairness, arbitrariness and ultimate failure of the government land distribution program, and is also responsible for much of the poverty of the contemporary Metis.

The Metis' claim to aboriginal title originally developed in the context of political and economic struggles over fur rights, and in related matters such as the North West Company's policy of antagonism toward's Lord Selkirk's colony. It has long been the "official" interpretation of Canadian historians that the first hint of Metis nationalism and the first realization that they could make a claim to the territory around Red River came when the officers of the North West Company began to spread the idea that the Metis were the "Lords of the Soil", and the English Hudson's Bay Company and Lord Selkirk were trying to take the land away from them.[27]

This premise led historians into making such statements as "At the door of the North West Company must be laid the responsibility for raising the racial conciousness of the Metis",[28] implying that the intrigues of the North West Company succeeded in creating an entire ethnic consciousness and claim for aboriginal title where none existed before. This is surely an exaggeration. When Miles Macdonell, the governor of Lord Selkirk's settlement, began issuing proclamations against hunting buffalo from horseback, and against exporting pemmican from the settlement, it must have become obvious to the Metis that some action would be necessary to protect their interests. How much imagination was needed for people born and raised in the area, taking for granted the right to use the natural resources of the area, to interpret these arbitrary orders from an outsider as unwarranted intrusions and incursions into their own territory and their own business?

Historians are over-stressing the point when they credit the North West Company as the main force in instilling the idea that the Metis were the "lords of the soil" in Red River. It is a fundamental tactic of resistance to use whatever concepts your antagonist might have which work in your favor. Once the Metis became aware that the English population would acknowledge such a concept as "Indian Title" (even if it had not originally been applied to the Metis) it was only natural for them to press such a claim for themselves. When Lord Selkirk agreed to make treaty with the Saulteaux in the area after the Seven Oaks Massacre, the Metis must have seen this as an open acknowledgement of Indian Title, and were encouraged to press their own claim even further.[29]

However, there is little doubt that the concept of Indian Title, at least in the format used in treaty negotiations, was fundamentally European, and its basic assumptions were quite different from the way most aboriginal peoples regarded ownership of land. Individual ownership was of course almost unheard of, but there still was a lot of variation in the way different groups of Indians regarded the territories they inhabited. Usually, the rights a group held in a territory consisted of the right to exploit the natural resources of the territory in whatever way was possible or necessary to ensure survival both physically and culturally.[30] But once it was recognized that Europeans were prepared to recognize a more formal concept of title residing with the Indians, these came to be adapted by the aboriginal peoples.

This, apparently, is what happened with the Saulteaux around Red River. Foster postulates, much as other historians have done for the Metis, that the idea of the settlers' acknowledging a debt to the original inhabitants at first came as a surprise to the Saulteaux. However, while they may not have initiated the idea themselves, they immediately accepted the concept because of the leverage it gave them in their relations with the whites:

> Initially the Saulteaux concept of aboriginal rights could well have been a political tactic. In time, like the Metis, they would come to accept it as an article of faith.[31]

This essentially political aspect of aboriginal title is made clear later on in the history of Red River, when the Metis Provisional government drafted its List of Rights during the resistance of 1869-70. However strongly the Metis had come to believe in their right to Indian title, it was not mentioned in their List of Rights. The List does mention, in Article XIII, that treaties should be conducted between Canada and the different Indian tribes in the Province of Assiniboia with the advice of the local legislature, but nowhere is there any mention of treaties being signed with the Metis.

At that time Riel and his councillors saw no necessity for proclaiming aboriginal title for the Metis, since they felt that Metis land rights would be secure if control over public lands and resources was assigned to the provincial government. However, once negotiations began it became clear that the federal government had no intention of granting that particular request, and a grant to the half-breeds "in recognition of Indian Title" proved an acceptable compromise.[32]

However, despite the fact that aboriginal title of the Metis was now accorded official recognition, it was a decision that had been arrived at without consultation or approval of the Metis. Rather, it had been arrived at through negotiations between Ritchot on one hand and John Macdonald and George Cartier on the other.[33] The form compensation was to take was arrived at unilaterally. Instead of negotiating treaties with the Metis, or instead of dealing with the Metis as a collective,

individual Metis were to be given enough land to set themselves up as self-supporting farmers.

There have been many complaints about the way the distribution of scrip was handled, but as far as the Metis Association of Alberta is concerned, this is almost of secondary concern. The real problem was that the whole decision to use scrip was a unilateral decision on the part of the federal government, and no consultation with the Metis or their leaders had ever taken place. There is no direct evidence that the Metis approved of the decision to be treated individually rather than collectively as the Indians were; there is only the indirect evidence that they accepted scrip after being told that it was all they were going to get. In fact every indication shows that they may well have had different ideas, had they ever been consulted.

Some idea of how the Metis in general viewed the question of their land rights might be gained by examining the perceptions of aboriginal title held by their leader, Louis Riel. Professor Flanagan has recently brought together much of the scattered writings Riel has left us on the subject.[34] It is clear from this survey that Riel viewed the Metis not as individuals to be satisfied separately with scrip, but as a collective entity existing over time. This was not the first time that the Metis were characterized as a nation, and it is not simply a concept that Riel arrived at himself.

It is evident from Riel's writings that he had an extremely clear and well-thought-out concept of Indian title as it pertained to the Metis. He asserted in 1884 that the natives still had an unextinguished aboriginal title to all of the North-West, with the possible exception of the original boundaries of Manitoba. He further maintained that compensation for this aboriginal title should be proportional to the value of the land surrendered, and not dependent on the number of natives occupying the territory. In other words, he was arguing against dealing with the Metis individually, paying them each an arbitrary settlement for their surrender of title. He wanted the Metis treated as a collectivity, with provision made for future generations; the compensation was to be in the form of "interest on the sum which our country is worth". He asserted that the treaties with the Indians and the settlements offered the Metis were fraudulent because they had never taken the dollar value of the land being surrendered into consideration.[35]

He further held that the right or title to land of all nations, whatever their level of civilization, was qualitatively the same. Thus the Cree had the same right to their land as the French or English had to theirs.[36] This was in direct conflict with the view, fairly prevalent at the time, that the land belonged to those who first converted it to agricultural use.

One interesting aspect of Riel's concept of Indian Title was his acceptance of the concept of extinguishment. This is in marked contrast to some of the modern conceptions of aboriginal title we shall be considering below. However, in Riel's scheme, that extinguishment was to be well compensated for. He saw the ideal agreement as one which

would provide capital and resources for future generations of Metis. It would translate recognition of aboriginal title into something that could be used to the Metis' advantage in the white-dominated society.[37] This position, incidentally, is somewhat similar to that espoused by the Metis Association of Alberta today. A secure land base for the Metis is seen as the means of creating a firm economic force to be used for the benefit of the Metis now and in the future.

Had Riel's concept of compensation for the aboriginal rights of the Metis and Indian been followed through, it is safe to say that there would not be the widespread poverty among the Metis there is today, the millions of dollars spent on this and other land claims research would not have been necessary, and aboriginal title would not be the subject of bitter controversy between government and native people it has become, at least not among the Metis.

Contemporary Concepts

The concept of aboriginal title today has undergone some fundamental changes as native leaders have begun to put more of their own interpretation and concepts of land ownership into their demands and negotiations, and aboriginal title is losing its strictly white and legalistic orientation. It is slowly developing a truly native character, but the question is whether or not the Canadian government is prepared to accept this reformulation of aboriginal title, or whether it will retrench and rely on the narrow definition of it which would be recognized in a court of law. There is still a rather broad spectrum of opinion on the natives' side over what the actual characteristics of aboriginal title are, but the basic change involves new attitudes towards extinguishment.

The most clear-cut example of how the concept of aboriginal rights is being reorganized and expanded came in the mid-1970's from the Dene, who quickly realized, once they began re-examining their position, that there were severe limitations as to what aboriginal rights guaranteed and what they could expect with extinguishment. Once native people began to understand just what aboriginal title really meant in law, it became obvious that a simple demand for recognition was not going to be very satisfactory. The Dene response was to demand "recognition, but not extinguishment of aboriginal rights", a demand that translated itself into a proposal for a special form of Dene jurisdiction or government over their own territory:

> . . . recognition, not extinguishment, of rights in the form of an exclusive Dene jurisdiction or government is the first principle of our position. We cannot understand how anyone could seriously suggest that we would consider negotiating the extinguishment of our rights. What we insist upon is departure from the tradition in Canada that rights must be extinguished. We want our property rights to our land recognized and

> preserved, not extinguished. . . . However, our rights are more than property rights. We have important human rights recognized in International Laws, such as the right to self-determination as a people.[38]

The Dene questioned the basic assumption of the federal government that the only way to respond to a demand for recognition of aboriginal title was to offer to extinguish these rights, an assumption which persists today. The Dene responded to this by equating aboriginal title with more than simple and limited property rights; they linked it to the internationally recognized standard of human rights, specifically to the right of self-determination as a people.

This was a significant and radical extension of the concept of aboriginal title, at least as far as the Canadian government was concerned, and the Minister of Indian Affairs quickly issued a statement refusing to recognize such a concept. Although the Dene were not advocating separatism, but rather a fairly extensive concept of self-determination and local autonomy within Canada, this was more than the government was prepared to deal with. The Minister chose to regard the Dene Declaration as a vehicle for separatism.

The Dene Declaration is not the only version of aboriginal title to be proclaimed by native people in Canada. One finds a large spectrum of alternative views depending on local conditions and perceptions. One moves from the demand for political autonomy among the Dene, to simple entrenchment of treaty rights among some status Indians, even to an acceptance of usufruct and extinguishment (albeit for a reasonable amount of compensation) by some. The Dene strategy was obviously designed for use in the political arena rather than the courts. Most court cases, including the recent Baker Lake decision on aboriginal rights, have demonstrated the unlikelihood of native versions of aboriginal title being upheld under present legal definitions, and that it is a good idea to stay out of court and negotiate with the government whenever possible.

In addition, native groups residing in areas under provincial jurisdiction have the added difficulty of having to deal with another powerful government bureaucracy in addition to the federal one, since the province has jurisdiction over lands and resources. Thus, any settlement the Metis of Alberta reach with the federal government will also have to include participation of the provincial authorities, a course that will undoubtably prove to be a long and arduous one.

It was not long before a split occurred between the Dene organization (at that time known as the Indian Brotherhood of the N.W.T.) and the Metis Association of the N.W.T. The major cause of the split, which occurred in 1976, centered around the question of the separate status of the Dene nation within Confederation. The Metis refused to support the Declaration. They were particularly upset by the statement that the government of Canada was not the government of the Dene, charging the Indian Brotherhood with fostering separatism.

This split has never been satisfactorily healed, despite pressure from the federal government on the two organizations to present a joint land claim. Even after funding for land claims research and negotiations was cut off for both organizations, all efforts at forcing a healing of the breach failed.

This split caused much speculation and surprise in the south, but given the historical role of the Metis and the relationship with the government they have had in the past, as government agents in treaty negotiations, the actions of the Metis Association of the N.W.T. may not be all that surprising. There is no doubt that the Metis organization was much more "pro-development" and "pro-government" than the Dene organization. One of their plans was to purchase the federal government's one-third share of the Normal Wells oil operation, and turn over all land negotiations to the Dene. The profits from the Norman Wells operation would be used to benefit the Metis in compensation for their aboriginal title. As can be seen, the split between the two associations is one of fundamental difference in philosophy, and it continues to this day.

However, in spite of the way in which the Dene Declaration caused a rift between the Indian Brotherhood and the Metis Association, many more native organizations are linking aboriginal rights to rights for self-determination or self-government, including some Metis and Non-Status Indian organizations in the south. It is in this spirit that the Metis are currently reiterating their conception of themselves as the "New Nation", a national entity that has joined Confederation voluntarily. The Native Council of Canada, which is the national association for Metis and Non-Status Indians, (of which the Metis Association of Alberta is a member) has approved a Declaration of Metis and Indian Rights which outlines their position on both land claims and political representation. This declaration was presented to a Joint Cabinet-NCC Committee on March 19, 1979.

Their concern regarding political representation is dealt with first. While they take pains to ensure that they are not contemplating separation from Canada ("Metis nationalism is Canadian nationalism") they nevertheless declare that they:

> . . . have the right to self-determination and shall continue — in the tradition of Louis Riel — to express this right as equal partners in Confederation.[39]

This objective of self-determination is somewhat similar to that stated in the Dene Declaration, but the means of achieving it is quite different; the emphasis is on using the existing political structures of Canada. The declaration demands "the right to guaranteed representation in *all* legislative assemblies".

What are the bases for these demands? The declaration expands:

> We are not an ethnic or immigrant group which leaves foreign countries to improve its life in Canada. We built

> a nation on this soil and were prepared to join Canada so as to build a larger and stronger nation. But we maintain the right to stay in or get out of Confederation. Our goal is to remain in Confederation but as an equal partner.[40]

The declaration stresses that the Metis are a people with a right to a special status in Confederation. That special status is based on the Metis' role in Canadian history:

> As partners in Confederation, we have the right to stay in Confederation or get out of it. We decided not to exercise this right in full when we brought Manitoba into Confederation in 1870. We believed in Confederation then and turned down offers to join the United States. We thought Confederation would allow us to develop and prosper as distinct people, as a partner in Confederation. History shows that our hopes were not fulfilled.[41]

This historical background and claim to special status forms NCC's rationalization for land claims as well. Their stand on claims states in part:

> That we have the inalienable right to the land and the natural resources of that land.
>
> That we have the right to determine how and when the land and resources are to be developed for the benefit of our people and in partnership with other Canadians for the benefit of Canada as a whole.[42]

By the use of the word"inalienable" the Metis seem to be indicating that they too are ready to restructure the common meaning of aboriginal title. This shows a definite progression from the original views of Louis Riel, although it is a logical progression, fitting in with other contemporary organizations and their interpretations of aboriginal title. How important the point of inalienability really is will not become clear until actual negotiations between the government and the Metis commence. The practical point of the matter is that the benefits of their aboriginal title be awarded in such a way as to preclude its dissipation and guarantee its benefit to future generations. The attitudes of the provincial authorities will also have to be considered, and make it extremely unlikely that inalienability will be a completely feasible strategy to follow.

The views of NCC are not wholeheartedly accepted by the entire Metis population, although there is a great deal of common ground. The Association of Metis and Non-Status Indians of Saskatchewan is

not at present a member of NCC. However, in their declaration of Metis rights they have made similar demands for special status as Native people, including the right to self-determination and self-government, and the right to have their own representation in all legislative assemblies.[43] As far as their land claims are concerned, however, they are somewhat more specific than NCC. They are demanding "a just settlement for the loss of our land and the . . . means by which we made our livelihood." This demand for a settlement implies an acceptance of extinguishment, but in return they want an equitable compensation in land, the right to determine when and how the resources in the North will be developed, plus an assurance that these will be developed for the benefit of the Metis "in partnership with other Canadian people".

There is one thing that all the Metis associations (as opposed to Non-Status Indian organizations) stress in common: the necessity of treating the Metis as an ethnic collectivity, or even a "nation". This is directly opposed to the approach that Canada took originally, when it treated the Metis as individuals, but it is a tradition which can be traced directly back to Riel's insistence in 1885 that the Metis were *not* individuals to be separately satisfied but a collective entity that existed over time. It can be traced back even further, prior to the Red River "Rebellion" when the Metis began to refer to themselves as the "New Nation". The demand for representation in all levels of legislature that NCC, AMNSIS, and several other Metis organizations are putting forward is also a long-standing tradition of the Metis, one that can be traced back to the Provincial Government's original List of Rights of 1869-70.

The Metis today still form a viable ethnic entity, with their own political and cultural traditions. The group may have changed since the days when they were known as the Bois-Brulés, but they still are a viable ethnic force.[44] They are now demanding that this reality be recognized, and that the government at last deal with them accordingly.

Non-Status Indian claims in the other parts of Canada differ from the claims in the Prairies precisely because of the Metis' long-standing heritage as an ethnic group, and because the Metis in the Prairies can also point to specific legislation which recognized their aboriginal title. The Non-Status Indians of the Maritimes, however, are forced to follow a different course, based on the historical and cultural traditions of their area. According to the government, their aboriginal rights have been "superceded by law." They have to begin with a demand for recognition:

> 1. We demand that government recognize us as native people and grant us that special status that is in accordance with the British North American Act of 1867.
>
> 2. That the government of Canada recognize there is an outstanding land claim in the Maritime Provinces of Canada.

> 3. That the government of Canada initiate negotiations with all the native people in the Maritime Provinces to settle their just claims in order to alleviate and enhance their quality of life, committing itself to positive action for them all.[45]

There are, as can be seen by this example, several significant differences in the legal position of the Metis of the Western provinces and the Non-Status Indians of the Eastern provinces. Different regulations, government proclamations and documents, history, and precedents all combine to produce a completely different status for aboriginal claims in different parts of the country. But what does remain constant for all Metis and Non-Status Indian groups across Canada is a desire to have a truly native definition of aboriginal rights prevail, one which will ensure sufficient control over their territory and at least some measure of self-determination for the future.

CONTEMPORARY LEGAL CONCEPTS OF ABORIGINAL TITLE

It was not many years ago that writers on aboriginal rights had to stress that native peoples not only had a moral or ethical claim to their aboriginal lands, but a solid legal claim as well.[46] Since then, there have been many cases that have gone through the courts, such as the Calder case in 1973 and the Baker Lake decision on aboriginal rights in 1979. These cases have not only legitimized the concept of Indian title in the public's and government's eyes, but have also begun to clarify the actual legal boundaries of aboriginal title; although no court has yet offered a precise definition.

Native people no longer have to stress the fact that they have legal claims, but the concept is still in such a state of flux and development that a careful consideration of how the courts have perceived the nature of aboriginal rights, and what documentation exists to support these rights is still in order.

The Source of Aboriginal Title

The Native Council of Canada, in its statement of claim based on aboriginal title, has stressed the significance of the Royal Proclamation of 1763 as a major source for aboriginal rights of the Metis people across Canada.[47] It is true that the Proclamation formalized the British recognition of aboriginal title, and its principles were later repeated in the 1869 Deed of Surrender for Rupert's Land, but it should be remembered that as recently as 1966, the Supreme Court of Canada in *Sigeareak EL-53 v. The Queen*, ruled that the Proclamation does not, and never did, apply to Rupert's Land.[48] Therefore, the Royal Proclamation itself must probably be dismissed as a source for aboriginal title of the Metis of the Prairie Provinces.

The Proclamation specifically excludes territory granted to the Hudson's Bay Company:

> And We do further declare it to be Our Royal will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion for the use of the said Indians, all the Lands and Territories not included within the Limits of Our Said Three New Governments, *or within the Limits of the Territory granted to the Hudson's Bay Company*, as also all the Lands and Territories lying to the Westward of the Sources of Rivers which fall into the *Sea from the West and North West as aforesaid*; (italics added).

The Letters of Patent granted in 1670 to the Governor and Company of Adventurers of England, trading into Hudson's Bay, gave:

> . . . unto the said company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid. . . .

The territory which was the birthplace of the New Nation lay within the boundaries granted the Hudson's Bay Company, and so the Proclamation probably cannot be said to apply to the Metis people of the Prairie Provinces. However, there is some question as to whether or not there is an implied recognition of the application of the Proclamation in these territories which can be inferred from the land purchasing provisions of the Proclamation. The retired Justice Hall has stated he now considers his judgement erred on this point in the Sigeareak decision.[49] Nevertheless, this decision continues to influence lower court decisions such as that in *Baker Lake v. Minister of Indian Affairs and Northern Development*.[50] Fortunately for the Metis, the Proclamation is not the only source of aboriginal title in Canada.

In the Calder case[51] six members of the Supreme Court held that aboriginal title recognized at common law had existed, even if the Royal Proclamation did not apply to the territories being considered. Three, Judson, J. with Martland and Ritchie, J. J. concurring, held it had not been extinguished, but the agreement of all six judges that there was aboriginal title at one time is solid authority for the position that the law of Canada recognizes the existence of an aboriginal title independent of The Royal Proclamation or any other prerogative act or legislation.[52]

This form of aboriginal rights that is gradually becoming recognized is in many ways unique to Canada. An instructive case for comparison is the decision of the Supreme Court of the Northern Territory of Australia, *Milirrpum v. Nabalco,*[53] since it referred to various decisions from many different jurisdictions. Blackburn J., had to conclude that the doctrine of communal native title had never formed part of Australia's law system. Mahoney, J., citing the Calder decision, found that this was *not* the case in Canada:

> The Calder case renders untenable, insofar as Canada is concerned, the Defendants' arguments that no aboriginal title exists in a settled, as distinguished from a conquered or ceded, colony and that there is no aboriginal title unless it has been recognized by statute or prerogative act of the Crown or by treaty having statutory effect.[54]

The court outlined some specific elements which must be proved by a group of native people to establish an aboriginal title cognizable at common law:

> 1. That they and their ancestors were members of an organized society.
>
> 2. That the organized society occupied the specific territory over which they assert the aboriginal title.
>
> 3. That the occupation was to the exclusion of other organized societies.
>
> 4. That the occupation was an established fact at the time sovereignty was asserted by England.[55]

These propositions are supported by several cases, including those of the Supreme Court of Canada in *Druger and Manuel v. the Queen,*[56] and the Calder case and those of the United States Supreme Court in *Johnson v. M'Intosh,*[57] *Worcester v. Georgia*[58] and *U.S. v. Sante Fe.*[59]

This list of criteria could have some profound effect on the Metis' case for land claims, and once again demonstrates the large gap that can occur between legal and native concepts over what aboriginal rights entail. The first criterion mentioned, that of comprising an organized society, would cause no problem for the Metis; the historic descriptions of their early society are well-documented. However, other elements in the list could prove troublesome. The "exclusive occupation" referred to in point number three does not seem appropriate to the Metis' case, where territory was often shared with other groups such as the Saulteaux. That the court would consider this to be of significance can be seen in the Baker Lake case, where much concern was

demonstrated over whether it was the Chipewyan or Inuit who occupied the southwesterly portion of the Baker Lake Area. Archaeological evidence was heard to help determine whether the two groups had occupied the common territory at the same time, or at successive times.

This concern grows out of several American cases, where it has been accepted that two or more tribes can occupy a territory and the Indian claim would not be defeated, but that an extended dispute over the territory would defeat such a claim.[60]

The question of aboriginal rights often includes reference to occupation of lands "since time immemorial". Mr. Justice Mahoney has held that, at least for Rupert's Land, "time immemorial" runs back from the date of assertion of English sovereignty over the territory, which was probably no earlier than 1610 and certainly no later than May, 1670.[61] Obviously, the Metis did not exist in the territory at that time since there were no whites there at the time. The Metis developed as a distinct national group in the west between 1670 and 1870, although there is evidence that they established themselves somewhat earlier in the Upper Great Lakes region.[62]

Fortunately, the Metis in the Prairies don't have to establish an aboriginal title under the circumstances outlined by the court, since the *Manitoba Act*, and several successive *Dominion Lands Acts* have already acknowledged their rights to Indian Title.

Limits of Aboriginal Rights

The Baker Lake case, while it can be regarded as an important affirmation of aboriginal rights in one sense, in another underlines the unsatisfactoriness of legal definitions for native people, and the reason why it is perhaps best for negotiations to stay out of court. The Baker Lake case did not come up with a precise definition of aboriginal title, but it did reaffirm that aboriginal title was not a proprietary right, and did not make the native people holders of surface rights (as defined by section 8 of the *Territorial Lands Act*):

> Canadian courts have, to date successfully avoided the necessity of defining just what an aboriginal title is. It is however, clear that the aboriginal title that arises from *The Royal Proclamation* is not a proprietary right. If the aboriginal title that arose in Rupert's Land independent of *The Royal Proclamation* were a proprietary right then it would necessarily have been extinguished by The Royal Charter of May 2, 1670, which granted the Hudson's Bay Company ownership of the entire colony. Their aboriginal title does not make the Inuit "holders of surface rights" for purposes of the section.[63]

In fact, all that aboriginal rights as recognized by the courts seem to confer is the right to hunt and fish over the territory in question.

Even then, the mining laws as they exist are recognized as taking precedence, diminishing the rights comprised in aboriginal title. Mr. Justice Mahoney allowed that the Inuit may or may not be entitled to compensation for the extent that their aboriginal rights are diminished by the Canada Mining Regulations, but since no compensation was being sought in this particular action, no further consideration was given to the matter.

Furthermore, the court found that the exploration companies had not disrupted the migration patterns of the caribou herds to the extent that the hunting rights of the Baker Lake Inuit were jeopardized, so it was held that no action needed to be taken there. It is difficult to guess what the courts would have suggested if there *had* been evidence that the caribou herds were indeed jeopardized, but it is unlikely that mining activity would be curtailed; probably financial compensation would have been recommended.

This decision has put the Inuit in a difficult position. Although on one level it is an important affirmation of aboriginal rights, it does not give the holders any means of controlling mining activity in their territory. The Inuit found this so unsatisfactory that there was talk of their taking an appeal to the Supreme Court of Canada.[64] This has not happened so far. Some leaders have stated that the expenses involved in appealing the case are too prohibitive, but privately they also expressed fears that even the limited recognition advanced by Mr. Justice Mahoney might be overturned, and the court might adopt an even narrower recognition of aboriginal rights, or even find that the Inuit were not entitled to aboriginal title at all.

This underlines the wisdom of native leaders trying to keep their land claims out of court, and negotiating with government instead. Baker Lake is a good indication of what can be expected in any contemporary court case involving recognition of aboriginal title (although the Metis case, involving as it does previously recognized rights would involve somewhat different principles).

But what is the likelihood of the Metis obtaining the type of settlement they want through negotiated settlements? Most of the agreements recently made with the government have indicated that the government has no intention of accepting the type of restructuring of local government that would be necessary for native people to control what would happen to their land in terms of development. The COPE agreement as signed in late 1978, for example, explicitly rules out the possibility, and recently (late 1980) the federal government indicated that they wanted to put transportation corridors through an area of the Yukon's North Slope that they had originally agreed to set aside as a wilderness park in the original COPE settlement package.

While the Metis in the Prairie Provinces have not asked for such sweeping powers as have the Dene, they have expressed concern over control of development and protection of the environment in this area, and the government has not appeared particularly tractable in this regard. In fact, given the contemporary political situation, the government

doesn't have to worry too much over the native cause[65] and doesn't have to worry too much over results of court cases either.

However, the results of Baker Lake show the wisdom of staying out of court, and not allowing the courts to define aboriginal rights. It is likely that all native people will be better off if they are able to negotiate some sort of recognition of aboriginal title from the government that would be closer in spirit to what natives themselves mean when they use the term "aboriginal rights."

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4

SCRIP

PART 1: DEFINITION AND REGULATIONS

THE TERM "SCRIP"

One of the most important aspects of Metis history and tradition is scrip, and the role it has played in the over-all fortunes and lifestyle of this people. Almost all of the Metis families in Alberta have stories of how their great-grandparents, grandparents, or in some cases even their parents were given scrip in recognition of their native heritage; and how this scrip was to provide a land base to provide for themselves and their children. There are further stories of how in most cases the scrip was lost, stolen or swindled from them.

Yet, for all of the interest in scrip and all the significance attached to it, remarkably little is known about it, even by the Metis themselves. It was the subject of much misunderstanding and misinformation among the Metis people when it was first distributed. Very few really understood what the government was doing when it issued scrip, or what Metis people were giving up when they accepted scrip. This misunderstanding persists to this day. And outside of the Metis population the term has been almost entirely forgotten. This chapter is dedicated to clearing up some of these misunderstandings; to inform Metis and Non-Metis alike of the meaning of scrip and the role scrip played in Canadian history.

The term (often mispronounced and misspelled as "script") is now almost obsolete, although it has had a long history of use, particularly in finance. It is generally believed to derive from the term "subscription", a receipt for a portion of a loan. It survives today in the limited meaning of a provisional document entitling the owner to a fraction or share of a stock, which can be exchanged for a more formal certificate when necessary payments have been completed. But it was once used quite generally to refer to a certificate indicating the right of the holder to receive payment later in the form of cash, goods or land. Less than seventy-five years ago, the term was in current use all over Western Canada, and to the Metis, and to other early settlers of the North West, it meant one thing — land.

Scrip was the way the government of Canada distributed lands to certain groups of people it wished to reward or mollify. Thus, scrip was issued to various members of the military, such as the volunteers, officers and soldiers "actively engaged in bearing arms in the suppression of the Indian and Half-breed outbreak in the North West Territories, 1885". Scrip was issued to the veterans of the Boer War, and to certain officers of the North West Mounted Police. It was used to settle claims of the Original White Settlers in Manitoba. And, most importantly for our purposes, it was used to recognise and extinguish the aboriginal rights of the Metis.

Scrip quickly became a tool of land speculators, who used it to gain title to large blocks of land, or who sold it to third parties for a quick profit. It also became a commodity which banks used to create investments, and many family fortunes (including those of some of the most politically prominent families of the West) originated in the scrip trade.

KINDS OF SCRIP ISSUED

As already indicated, there were many types of scrip; Half-breed scrip, Military Bounty scrip, North West Mounted Police Scrip, Colonization Company scrip, scrip for Hay Lands, etc. All scrip fell into one of two categories: "money scrip" or "land scrip", but both were intended to give the bearer a certain amount of Dominion Lands open for homesteading or pre-emption. The scrip notes looked like paper money; they were printed by the Canadian Bank Note Company, and were either issued in different monetary values, such as $80.00, $160.00, or $240.00, or in amounts of land; 80 acres, 160 acres, and so on (see Fig. 4.1 to 4.5 for examples of scrip).

But neither type of scrip was actually money in the strict sense of the word, although it was sometimes used to settle debts or purchase goods other than land. The only real value scrip had was that it could be redeemed for a certain amount of open Dominion Lands from the government. When lands were first open for settlement, the Dominion government arbitrarily valued the land at $1.00 per acre. Thus a $160 scrip entitled the bearer to 160 acres of land, to be selected from available Dominion Lands open for homesteading. Later, when land values increased, the money scrip was good for a correspondingly smaller amount of land. Thus, when land later came to be valued at $2.00 per acre, the $160 money scrip only entitled the bearer to 80 acres of land.

Land scrip, in contrast, was issued for specific amounts of land; for example 80 acres, 160 acres and 240 acres. Back when land was worth a dollar an acre, both forms of scrip were theoretically of equal value. Both a 160 acre land scrip or a $160 "money" scrip could be redeemed for the same amount of land. But later, when the value of land rose, the land scrips naturally became much more valuable.

Fig. 4.1 North West Half Breed Commission money scrip. Coupons have been detached. Glenbow-Alberta Institute

However, the two different types of scrip were always of different value to scrip speculators, because of the different regulations which attended the use of each. Especially in the case of Half-breed scrip, money scrip was much more desirable to speculators than land scrip, even after land values began increasing.

Money scrip had generally very few restrictions placed on its use. It was often simply made out to "bearer", and anyone in possession of it could go to a Dominion Lands Office and use it to purchase a parcel of land. Some forms of money scrip were made out to an individual (thus the scrip seen in Fig. 4.1 is made out to one Baptiste Forcier) but this did not prevent the person named thereon from legally selling his scrip, nor from another person purchasing it and using it to locate a particular parcel of land. This was because money scrip was defined as "personal property" as opposed to "real property" or "real estate".

On the other hand, Half-breed land scrip was totally hedged in by regulations aimed at discouraging speculation. Like money scrip, Half-breed land scrip could be located on any available Dominion Lands open for ordinary homestead entry. But unlike money scrip it could only be located in the name of the Half-breed grantee. The Department of the Interior was quite explicit about the proper procedure a Lands Agent was to follow in the case of land scrip, as the following memo makes clear:

> It has always been the practice to insist upon the grantee appearing personally at the office of the Agent of Dominion Lands when locating his or her scrip and the Agents have been repeatedly instructed, by circular and by letter not to accept such locations unless they were satisfied that the person presenting and desiring to locate was the actual grantee of the scrip so presented. In cases of doubt, it was necessary for the applicant to prove identity to the satisfaction of the Agent, before the application was accepted or entry granted under the scrip.[1]

The use of land scrip came about because of demands from the Half-breeds, clergy and others for actual land grants as opposed to scrip. Apparently land scrip was seen as a compromise. For example, in 1885 the Half-breeds of the Qu'Appelle Lakes refused to accept money scrip certificates for their approved applications.[2] As a result of this demand the Half-breed children who were eligible for a grant were given the option of taking either money scrip for $240, or land scrip for 240 acres of Dominion Lands. The heads of Half-breed families, however, were only entitled to money scrip.[3]

These regulations appear quite laudable in their attempt at protecting the Half-breed land grants from the hands of the land speculators. But in reality they were a hollow sham, because of the existence of the other form of "money" scrip, which was expressly designed to facilitate

DOMINION OF CANADA
Department of the Interior
NUMBER
0295
In conformity with Certificate form No.
granted by the North West Half Breed Commission
It is hereby Certified that under the authority of an order of
the Hon.ble the Privy Council dated 30th March 1885 as amended by the
order of the 18th April 1885 and in accordance with the provisions of subsec. 1 to 8 & 46 Vic. Cap 17
Baptiste Waniyande a Half Breed
is entitled to locate Two Hundred and Forty Acres of Dominion
Lands open for ordinary Homestead and Pre-emption entry.
The coupons attached to this will be accepted in payment of such lands on
presentation at the office of Dominion Lands of the district within which such lands are situated.
Issued at the Department of the Interior, Ottawa this Sixth day of June 1898
240
ACRES
240
ACRES
N.B. This Certificate of no value when detached from coupons hereto annexed.

Fig. 4.2 North West Half Breed Commission land scrip. Coupons have been detached; for a complete scrip see Fig. 4.3. Glenbow-Alberta Institute

speculation. In most cases the Half-breeds were given a choice of money scrip or land scrip, and money scrip was generally preferred. This is because the rules, regulations and Government policies which characterized the scrip programme usually made the selling of scrip for an immediate profit the most practical response the Metis could make, and money scrip was the most readily negotiable.

SCRIP REGULATIONS

The regulations which defined scrip and determined the rules for its distribution did not develop at once, or as a unified whole, but were a result of a long and involved process of change which went on throughout the entire scrip programme. They developed from a combination of legislative acts, Orders-in-Council, and individual rulings on specific cases made by the Department of the Interior. This resulted in an incredibly complicated, and oftentimes contradictory set of regulations, which made the rationale behind the administration of the scrip programme almost incomprehensible to the average recipient of scrip. However, a detailed knowledge of these regulations allowed some speculators to make a great deal of money. The simplest way of illustrating the evolution of this complicated set of regulations is to discuss the major legislative acts, Orders-in-Council, and scrip rulings in the order in which they were formulated.

Legislation

The *Manitoba Act* of 1870[4], which was the first legislative act to specifically recognize the aboriginal rights of the Half-breeds, made no mention of scrip. It merely stated the amount of land to be awarded (1,400,000 acres), and that the grant was to be for the benefit of "children of Half-breed heads of families". However, a later amendment in 1874[5] which extended recognition to the Half-breed heads of families who had been excluded under the Manitoba Act [6], specifically stated that compensation for their Indian Title was to be in the form of 160 acres of land, *or* scrip valued at $160.00 to be receivable in payment for the purchase of Dominion Lands. A later Order-in-Council recommended "in view of the great dissatisfaction which has been caused in Manitoba by the locking up of large and valuable tracts of land for distribution among Half-breeds" that *only* scrip be issued to satisfy the claims under the Act. The provisions for scrip rather than land was a significant change in policy, because it involved a substitution of a form of personal property for real estate. The implications of this change will be discussed below in a separate section.

In 1879 the Half-breed grants were extended throughout the North-West Territories (which at that time included the territory now known as Saskatchewan and Alberta) in the amendments to the *Dominion Lands Act* made that year.[8] Again, although an earlier section of the

North West Half Breed Scrip
Form No.
Two hundred and forty Acres granted in two coupons one for One hundred and sixty Acres the other for Eighty Acres.
Issued to
of
this day of 18
The office file containing evidence on which this scrip is issued is numbered
Accountant of the Department of the Interior
DOMINION OF CANADA
Department of the Interior
In conformity with certificate form No. granted by the North West Half Breed Commission
It is hereby Certified that under the authority of an order of the Hon.ble the Privy Council dated 30th March 1885 as amended by the order of the 18th April 1885 and in accordance with the provisions of subsection No. 41 & 46 Vic. Cap. 17.
a Half Breed
is entitled to locate Two Hundred and Forty Acres of Dominion Lands open for ordinary Homestead and Pre-emption entry.
The coupons attached to this will be accepted in payment of such lands on presentation at the office of Dominion Lands of the district within which such lands are situated
Issued at the Department of the Interior, Ottawa this day of 18
N.B. This Certificate of no value when detached from coupons hereto annexed.
DOMINION OF CANADA
DEPARTMENT of the INTERIOR
COUPON FOR
attached to Form No. North West Half Breed Commission
This coupon is receivable as payment in full for One Hundred and sixty Acres of Dominion Lands open for ordinary Homestead and Pre-emption entry if presented by at the office of Dominion Lands of the District within which such lands are situated
Issued at the Department of the Interior, Ottawa this day of 18
Countersigned
Accountant of the Department of the Interior
Deputy of the Minister of the Interior
This coupon has been located on the following lands
this day of 18
Agent of Dominion Lands for the District
DOMINION OF CANADA
DEPARTMENT of the INTERIOR
COUPON FOR
attached to Form No. North West Half Breed Commission
This coupon is receivable as payment in full for One Hundred and sixty Acres of Dominion Lands open for ordinary Homestead and Pre-emption entry if presented by at the office of Dominion Lands of the District within which such lands are situated
Issued at the Department of the Interior, Ottawa this day of 18
Countersigned
Accountant of the Department of the Interior
Deputy of the Minister of the Interior
This coupon has been located on the following land
this day of 18

Fig. 4.3 An unissued North West Half Breed Commission land scrip, showing coupons still attached. Glenbow–Alberta Institute

amended *Act* dealt with land scrip for Manitoba, no mention was made of scrip in connection with the lands grants to be made in the North-West Territories; it merely stated that these claims were to be satisfied "... to such an extent and on such terms as may be deemed expedient." In actuality, it was not until 1885, many years after the passage of this act, that the government even began to make an effort towards fulfilling this grant.

Orders-in-Council

The legislative acts such as the *Manitoba Act* or the *Dominion Lands Act* do not in themselves shed much light on the development of the scrip programme, or on the rationale behind the choice of scrip as the means of satisfying claims under the Metis land grants. The various Orders-in-Council which were the actual legal mechanisms for issuing scrip are much more informative in this regard. Orders-in-Council are statements of administrative policy, having the force of law, passed by the Privy Council (or actually the Cabinet, which is the active part of the Privy Council) usually at the recommendation of the senior officials in a Department or Government Agency.[9] Between 1871 and 1925 over 120 separate Orders-in-Council were issued regarding land claims and scrip issues to Half-breeds of Manitoba, Saskatchewan, Alberta and the North West Territories.[10]

Others were recommendations for specific legislation to be passed, and still others were amendments of previous Orders-in-Council. An example of this latter type would be the Order-in-Council passed on April 3, 1873. This amended a prior Order-in-Council established on April 25, 1871 and declared that only the children of Half-breed heads of families were entitled to grants under the *Manitoba Act*. Legislation to that effect was later passed that same year.[11]

Establishment of the Half-breed Commissions to investigate the Half-breed claims were done by Order-in-council, as was the appointment of the Secretary and other officials of the Commissions. Rules regarding the allotment of scrip in cases where the recipient died intestate, laws regarding the delivery of scrip to minors, and rulings on individual scrip claims were all authorized by Orders-in-Council. Other matters settled by Orders-in-Council were the authorization of replacement scrip to individuals whose original scrip had been delivered to persons who had forged their names; the extension of scrip programmes to the original white settlers of Red River; authorization of particular issues of scrip to Half-breed residents of the United States; authorization of the Half-breed Commissioners accepting Powers of Attorney in cases where Half-breeds were unable to appear before them to take delivery of scrip (1900); authorization of the opening and the later shutting down of the Half-breed Colony of St. Paul des Metis; the rescinding of the recognition of claims of Half-breeds residents in the United States, and many others.

Most importantly, the procedures for issuing scrip and determining eligibility were first outlined in Orders-in-Council. The Order-in-Council

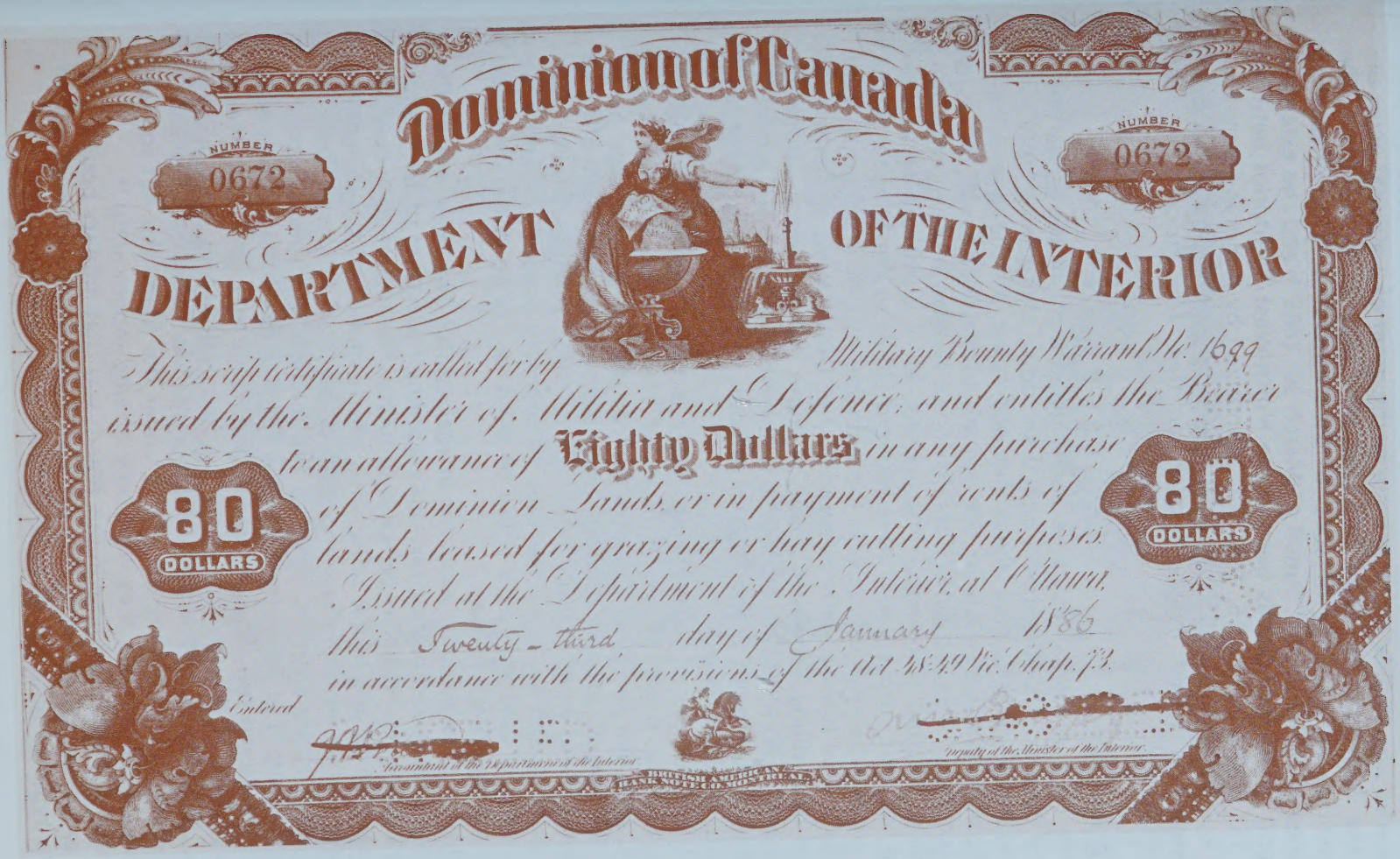
Dominion of Canada
NUMBER
0672
DEPARTMENT
OF THE INTERIOR
NUMBER
0672
This scrip certificate is called for by
Military Bounty Warrant No. 1699
issued by the Minister of Militia and Defence, and entitles the Bearer
to an allowance of Eighty Dollars in any purchase
of Dominion Lands or in payment of rents of
lands leased for grazing or hay cutting purposes.
Issued at the Department of the Interior at Ottawa
this Twenty-third day of January 1886
in accordance with the provisions of the Act 48-49 Vic. Chap. 73.
80
DOLLARS
80
DOLLARS
Entered
Assistant of the Department of the Interior
Deputy of the Minister of the Interior
BRITISH AMERICAN BANK NOTE COMPANY LIMITED

Fig. 4.4 Scrip was given to many other people besides Half-breeds. This is a Military Bounty Scrip certificate. Glenbow-Alberta Institute

issued April 26, 1875[12] described in detail the method used to determine who was eligible to participate in the grant of 1,400,000 acres under the *Manitoba Act*, and how the land was to be allotted. The procedures for issuance of scrip in the North-West Territories were outlined in the Order-in-Council of March 30, 1885[13], and the extension of scrip to all Half-breeds born in the North-West Territories between July 15, 1880 and July 16, 1885 was authorized by Order-in-Council on May 6, 1899.[14] The details of how these scrip programmes were administered is found in the section entitled *The Process of Scrip Distribution*.

Scrip Rulings

The scrip commissions came under the control of the Department of the Interior. The Orders-in-Council set down the general policy for the issuance of scrip, but these did not cover all the questions or problems which came up in the actual administration of the scrip programmes. When the Scrip Commissioners needed more information, or more detailed procedural instructions, or if questions of a legal nature or policy arose, these were referred either to the Minister of the Interior or his senior officials. If the question was of a primarily legal nature, it was subsequently referred to the Department of Justice for advice or a ruling. However, many of these rulings, which ultimately had a profound effect on the Metis in the North-West, were arbitrarily made by Department of the Interior officials with little regard for legal or other considerations.

Although many of these rulings made in Ottawa were questionable from a legal point of view, most of them stood without being challenged, and in effect became part of official scrip policy. Some were challenged, usually by scrip speculators,[15] but most were allowed to stand. There were literally hundreds of these rulings, ranging from such basic questions as to the type of property scrip represented, to what types of land that scrip could be used for. Some of the more important scrip rulings follow:

1. *Was scrip personal property or real estate?* This was one of the most significant and basic questions regarding the nature of scrip, since if scrip was deemed to be personal property, the recipients would not be protected by any of the safeguards which applied to the assignment and registration of land. Defining scrip as personal property made it a much more easily disposed of asset; and made it much more attractive to speculators. The Department of the Interior ruled that money scrip was the personal property of the allottee[16] and that land scrip was to be treated as if it was real estate.[17] Some Half-breeds were given a choice between money scrip or land scrip, but in many scrip issues, such as the one extending the grants under the Manitoba Act to Half-breed heads of families, they were only offered money scrip.[18]

Another important ruling in this regard was that military bounty was ruled as being real estate.[19] This left Half-breed money scrip as one of the few types of scrip issued to be defined as personal property.

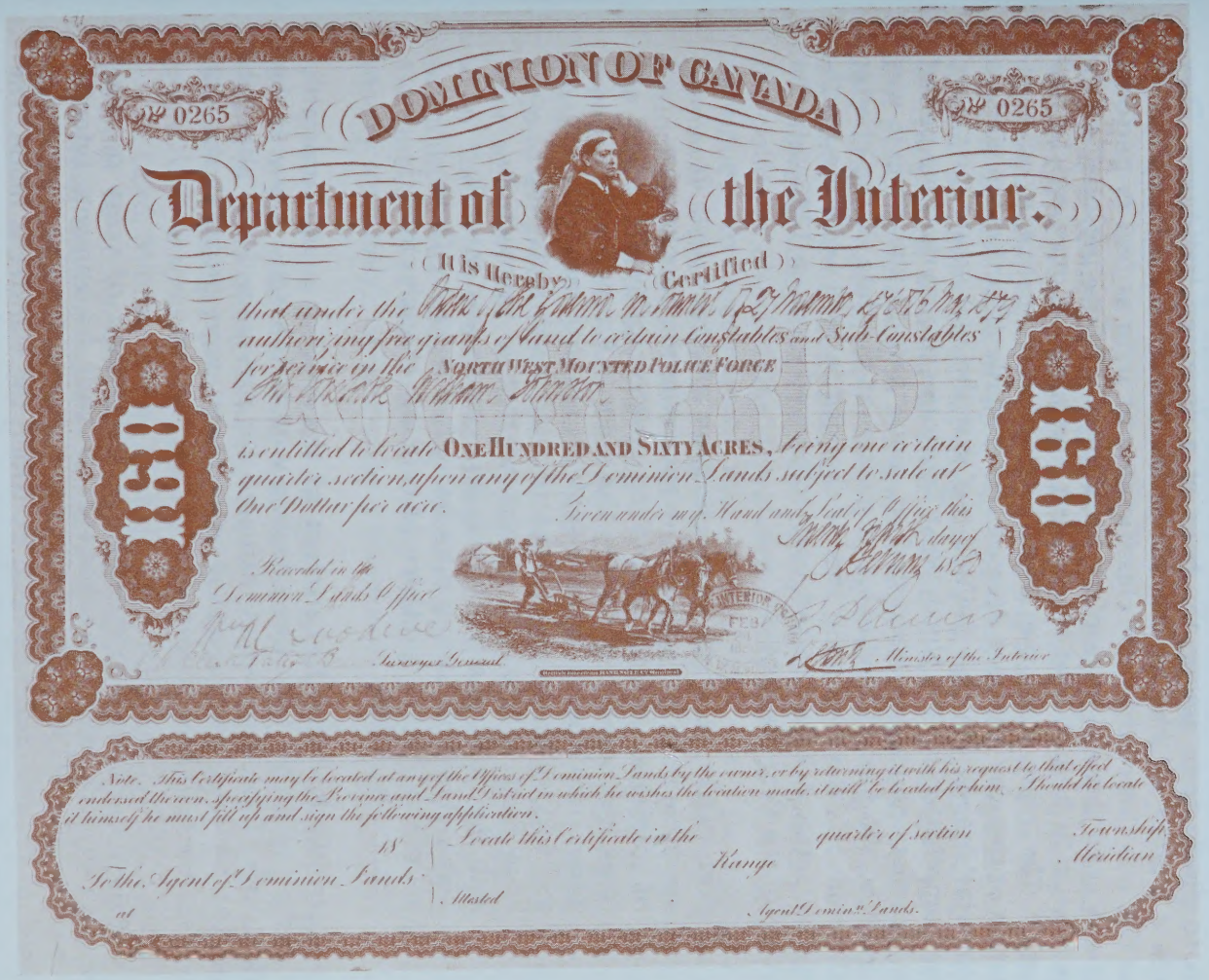
DOMINION OF CANADA
№ 0265
№ 0265
Department of the Interior.
It is Hereby Certified
that under the
authorizing free grants of land to certain Constables and Sub-Constables
for service in the North West Mounted Police Force
is entitled to locate One Hundred and Sixty Acres, being one certain
quarter section, upon any of the Dominion Lands subject to sale at
One Dollar per acre.
Given under my Hand and Seal of Office this
Recorded in the
Dominion Lands Office
Surveyor General
Minister of the Interior
Note. This Certificate may be located at any of the Offices of Dominion Lands by the owner, or by returning it with his request to that effect
endorsed thereon, specifying the Province and Land District in which he wishes the location made, it will be located for him. Should he locate
it himself he must fill up and sign the following application.
To the Agent of Dominion Lands
at
I locate this Certificate in the quarter of section Township
Range Meridian
Attested
Agent Dominion Lands.

Fig 4.5 North West Mounted Police Bounty Certificate. Glenbow-Alberta Institute

2. *Were the heirs entitled to the scrip claim of a deceased Half-breed?* The Department of the Interior ruled that they were. This was confirmed in an Order-in-Council.[20]

3. *What were the laws of inheritance as applied to scrip?* The Commissioners charged with investigating scrip claims often had to decide how to divide scrip among the heirs of a deceased Half-breed. They made a request to the Department of the Interior for information on how this was affected by the classification of scrip as real or personal property, and desired an explicit breakdown of how personal estate was passed to heirs in the North-West Territories as opposed to real estate.[21] The reply from the Deputy Minister of Justice is quite indicative of the way arbitrary decisions were made affecting the welfare of the Half-breeds. He first pointed out that the real estate laws were quite complicated for the North-West Territories during the time period the commissioners were interested in, since part of the time it was covered by the Law of England as it existed at the date of the charter to the Hudson's Bay Company, then it changed in 1875 when the *North-West Territories Act* was passed, and it changed again in 1886 with the passage of the *Real Property Act*.

> Fortunately, *it is not in my opinion necessary that in awarding scrip the rules of law governing the devolution of intestates' estates should be strictly followed* . . . I think it is competent for the Governor in Council . . . to adopt such rules as he may think proper with respect to the succession to the claims of such halfbreeds who have died intestate. I understand that in connection with the Manitoba halfbreeds this course was actually followed, certain simple rules being laid down by Order-in-Council for the guidance of officials in such cases.[22] (emphasis added)

This illustrates how the Department of the Interior could arbitrarily ignore the law of the land when dealing with Half-breeds. Many of the scrip rulings showed an equal disregard for prevailing laws, although some, like the refusal to recognize assignments, were probably thought to protect the Half-breeds' interests.

4. *Would the government recognize assignments of scrip, or issue patents to persons holding assignments to land?* Assignments refer to the transfer of a claim, right, interest or property from one person to another, or the document or deed by which the transfer is made. The government from early on, in both scrip rulings and Orders-in-Council, had indicated that it would *not* recognize assignments wherein a Half-breed had transferred his claim or right to participate in the Half-breed land grants to another person.[23] It was explicitly stated that these policies were designed to discourage scrip speculation:

> . . . with a view to discourage the operations of speculators in these lands, no prospect has been at any time held out that . . . assignments would be recognized by the government, and believing such policy to be directly in the interest of the persons for whose benefit the lands were appropriated, he respectfully recommends that the same now receive the authority of the Privy Council.[24]

This was in reference to Half-breed land scrip which was issued on certificates which were granted by the Half-breed Commissions of 1885, 1886, and 1887. However, in 1893, when it was found that only a small number of this class of scrip was outstanding, the Department of the Interior recommended that assignments for the remaining scrip should be recognized, in order to close out the issue.[25] It added that even if this policy of refusing to recognize assignments had been successful in discouraging speculation ("which is very doubtful") the period of its usefulness had certainly passed.

However, despite this rather cynical assessment of the success of the policy in discouraging speculation, the Department of the Interior continued to recommend that assignments not be recognized, whenever a new issue of scrip was contemplated. Thus, the Order-in-Council of March 2, 1900[26] which extended grants to children born in the Treaty 8 area between July 15, 1870 and the end of 1885, recommended that there should be no recognition by the Commissioners of assignments, and that there should be no delivery of certificates for scrip to assignees. However, an Order-in-Council dated just eleven days later amended this; ordering Commissioners to accept assignments of scrip "upon their being satisfied that the agreements under which assignment was made . . . does not operate to the disadvantage of the Half-breed."[27] It was later clarified that this amendment applied to *money scrip only*, "as land scrip is non-transferable".[28]

5. *Would the government recognize powers of attorney in granting scrip?* In this case, the ruling was yes. A power of attorney is a legal instrument authorizing someone to act as another's attorney or agent. Someone holding a power of attorney with regard to a Half-breed scrip could receive scrip directly from the scrip commissioners.

D. Laird, Minister of the Interior, first recommended that powers of attorney be recognized in relation to the scrip distributed among the Half-breed head of families entitled to grants under the *Manitoba Act* (this issue consisted entirely of money scrip):

> . . . scrip is to be delivered to the person entitled thereto, on his or her proper identification to the satisfaction of the Dominion Lands Agent or to any person producing a properly executed or otherwise satisfactory power of Attorney from the claimant to receive same.[29]

This was simultaneous with his recommendation that assignments *not* be recognized.

When it was decided to issue scrip in the North-West Territories to those Half-breeds born between July 15, 1870 and the end of the year 1885,[30] it was originally recommended that no powers of attorney be recognized. It will be recalled that in the same Order-in-Council, no assignments were to be recognized either. However, an Order-in-Council following almost immediately amended the prior recommendation:

> The Minister submits, as to this provision of said Order-in-Council, that on further enquiry and full consideration he finds that numbers of the Half Breeds are reported to have made agreements for the sale of their scrip, and have under such agreements given powers of attorney to the buyers thereof; that such contracts are in many cases favourable to the Half Breeds and provide for disposition of the scrip which will be more advantageous to them than if the contract be nullified and they be obliged to dispose of it anew; and that it will be necessary to provide for the recognition of powers of attorney in the case of Half Breeds who, through illness or other cause, are unable to appear before the Commissioners to take delivery of scrip.[31]

Again, as land scrip was non-transferable this regulation only applied to money scrip.

> In order to remove doubt . . . I would suggest the desirability of making it clear that *it is only in the case of money scrip that powers of attorney or assignments are to be acted upon;* and that in the case in which a Half-breed asks for land scrip, the Commissioner has no authority to accept or act upon any assignment or Power-of-Attorney.[32] (emphasis added)

One situation in which a Half-breed could occasionally take advantages of a speculator was in selling his power of attorney more than once. The government ruled that in cases where two or more people found themselves holding power of attorney for the same person, it would recognize the claim of whoever submitted it first.

6. *Could a Half-breed minor legally assign his or her scrip?* The Department of the Interior ruled that it would not recognize assignments made by minors.[33] The Deputy Minister recommended that in the case of land scrip, the Half-breed recipient must be at least eighteen years of age before he would be permitted to locate his scrip, and he could not alienate it after he located it until he attained his age of majority. The reasoning behind allowing him to locate it at eighteen

was because that was "of the same nature as the purchase of land with money, and as a minor could buy land from the Government, a minor holding scrip could likewise locate the same."[34] No reason was given for not allowing a minor to alienate his or her land until reaching the age of majority. In order to bypass all these regulations, a Half-breed minor or his parents or guardians had only to ask for money scrip rather than land scrip.

7. *Could a guardian locate or assign a Half-breed minor's land scrip?* Yes; the scrip could be located by the guardian, provided such guardian was appointed by the proper court. After the land was so located, it could be assigned in the usual way by the guardian, and the patent for the location would be issued in the assignee's own name.[35] The rationale for this ruling was that the Department of the Interior was "fully protected in such a case", since it was the guardian who "would have to give security for the due accounting to the minor for the minor on the minor attaining his full majority".[36] At first, the Department insisted that if the land on which it was desired to locate the scrip was situated in the North West Territories, Letters of Guardianship had to be obtained from the proper court of that jurisdiction; and if the land was situated in Manitoba, the letters had to be obtained from the court of Manitoba.[37] After pressure from speculators,[38] the Department ruled that either courts would be recognized, irrespective of where the land was to be located.

8. *Could scrip be used to acquire homesteads or pre-emption rights?* The Department of the Interior ruled that it could. A person who entered a homestead on open Dominion Lands was given 160 acres (one quarter section). He was expected to reside on the property for three continuous years, cultivating it and making various improvements, after which he was eligible to receive patent (legal title to the land). At the same time, he was entitled to a *pre-emption* of any adjoining 160 acres of unclaimed land, which he also was expected to cultivate. Pre-emption rights meant that when patent was granted to his original homestead, the homesteader was then entitled to buy the adjoining land at the government rate of one dollar an acre. Any homesteader who for some reason wished to get his patent earlier could do so a year after entry by paying the government rate for the land; one dollar an acre. He could also purchase it with scrip, at a considerable saving to himself.

A 160 acre scrip could be bought for a little as one half of the market value of the land and then applied to the homestead, or to the pre-emption lands. The Department of the Interior had special rules to facilitate the use of scrip for the homesteader. One such ruling was as follows:

> Where permission is granted to a homesteader to abandon his homestead for the purpose of applying Half-

> breed scrip thereon, such homesteader, once his abandonment has been filed and accepted, has 60 days to apply such scrip. This special privilege is allowed on condition that an assignment from the Half-breed himself is the only assignment the Department will accept or recognize, and should be filed with the Department as soon as possible after location of scrip. This regulation also applies to cases where a homesteader is permitted to apply Half-breed scrip upon his pre-emption.[40]

The patent could only be made in the name of the homesteader after which he could dispose of it in any way he wished.[41] These regulations demonstrate how the Department of the Interior was willing to accommodate homesteaders at the expense of the Half-breeds, again encouraging the passage of scrip from Half-breed hands.

9. *Could scrip be applied outside Manitoba or the North-West Territories?* No it could not. Again, this caused some hardship to Half-breeds who could not get a patent to land in vicinity they were already living in.

10. *Could Half-breeds who had signed treaty withdraw in order to claim scrip?* The ruling was yes. The Commissioners appointed to investigate the claims required, however:

> . . . that in the case of applicants who had belonged to a band under treaty, a certificate of discharge should be produced, the object being to guard against an applicant being granted compensation for the extinguishment of his Indian title in his capacity of a Half-breed while at the same time he was an Indian receiving compensation for the extinguishment of the same title by the receipt of annuity money and of the other benefits derived by the members of his band under its treaty.[42]

Any treaty money the Half-breed had received while being under treaty was deducted from the value of the scrip he was to receive.

There was some question about Half-breeds who had withdrawn from treaty to take scrip and now wished to re-apply for treaty status. The ruling was that Half-breeds in Manitoba who had taken scrip were specifically barred by special legislation[43] from re-admission to treaty, and that it could only be done in the North-West Territories in special cases with the approval of the Superintendent General.[44] A number of Half-breeds in the North-West Territories were subsequently re-admitted to treaty, on the condition that they would repay the value of scrip they had received. However, several concurrent opinions in both the Department of the Interior and the Department of Indian Affairs held that such individuals had no re-entry rights, since by receipt of

land or scrip their interest in Indian title had been extinguished. It was finally decided that no more would be re-admitted, since:

> Even if annuities were withheld so long as would be necessary for the annuities to make up the amount of scrip, the same objections would hold good immediately payments commenced. Half-breeds who had received scrip would still not be Indians in the eyes of the law.[45]

These regulations underline how scrip was specifically seen as an extinguishment of Indian Title by the government, even if it was not always made clear to the Half-breeds.

11. *Was the Department of the Interior responsible to investigate complaints of scrip being fraudulently acquired or fraudulently located?* The Department consistently refused to investigate such charges.

> . . . in January 1913, the then Minister of the Interior (Mr. Roche) decided that applications claimed to have been made by fraud investigated by the Department could not be considered and such decision has since been adhered to.[46]

If claimants wanted to take action, they were told they were free to go to court on their own, but the Department would not instigate any such proceedings.

THE EFFECT OF SCRIP REGULATIONS

A basic characteristic of any scrip programme is that it is an open invitation to land speculation; scrip is admirably suited to the quick transfer of land title from one person to another. Most of the Legislative Acts, Orders-in-Council and scrip rulings examined in the previous section show a tendency to facilitate this speculation.

Definition of Scrip as Personal Property

Defining money scrip as personal property and land scrip as real estate had some serious implications for the Metis. Personal property can be sold or assigned as the owner wishes. There are almost no restrictions on its transfer. Real estate, on the other hand, has specific restrictions attached to its assignment or sale. That is because of the inherent nature of real estate; it cannot be transferred physically from owner to owner. Only the title can be transferred, by proper registration. Thus, money scrip could be bought and sold at will (it was also easily lost or stolen) but land scrip was encumbered by several

specific restrictions: only the Half-breed recipient could locate the scrip, and no assignments could be made until the title was properly issued to the Half-breed.

This classification of scrip into two distinct types of property allowed the government to express a concern with discouraging or at least regulating speculation in Half-breed scrip, without posing any real threat to serious speculation. All of the regulations aimed at discouraging speculation (the refusal to recognize assignments or powers of attorney, the insistence on the Half-breed personally locating his or her scrip) applied to *land scrip only*. In contrast, the trade in money scrip was wide open. The government today can and does point to the regulations pertaining to discouraging speculation to justify its behaviour during the scrip programme; specifically denying any breach of trust with the Half-breeds.[47] But the concurrent existence of the money scrip issues demonstrates that the government was not really serious about controlling speculation.

One of the results of these different regulations can be seen in Table 4:1 which indicates the amount of both types of scrip issued between 1885 and 1923. At first, the amount of money scrip far exceeds the amount of land scrip issued, as it was the more popular with speculators. When government lands were valued at $1.00 an acre, land scrip and money scrip could both be turned in for the same amount of land (e.g. one would be given a choice of $240.00 scrip or a 240 acre land scrip). But when land values began to rise, land scrip became more valuable, and therefore became more popular with speculators, even though it was more difficult to locate. As the table indicates, 1710 money scrip certificates were issued in 1885, as opposed to 232 land scrip certificates. The difference was even more dramatic in 1899, when 40 land scrip certificates were issued compared to 1195 money certificates. However, the number of land scrips began to increase dramatically in 1900, and from then on until 1910, requests for land scrip usually outnumbered the requests for money scrip.

The Metis were the only people whose land claims were settled by their being given personal property instead of real estate. Indians were given land in recognition of their aboriginal rights, and what is more, this land was inalienable. Military bounty was considered to be real estate. And the Selkirk, or "original white settlers" were given real estate as well.

The original white settlers represent a particularly ironic case when compared to the Metis. It will be recalled that in 1873 it was determined by Order-in-Council that only the *children* of Half-breeds were entitled to grants of land under Section 31 of the *Manitoba Act*; the heads of families themselves were entitled to nothing.[50] A scant two weeks later a unanimous decision in Parliament, gave land to *all* original white settlers, including the heads of families "since it was rather hard that they should not have the same advantages as those of mixed race".[51] It is true that in 1874 it was decided to allow the Half-

YEAR	CLAIMS DEALT WITH	CLAIMS ALLOWED	MONEY SCRIP CERTIFICATES ISSUED	VALUE	LAND SCRIP CERTIFICATES ISSUED	NUMBER OF ACRES
1885	1694	1678	1,710	$8,279,200.94	232	55,260 acres
1886	1414	1164	N.A.	261,684.14	N.A.	2,640 acres
1887	821	593	678	122,424.15	13	3,120 acres
1889	1253	817	817	183,567.72	—	—
1899	N.A.	1243	1,195	286,800.00	48	11,520 acres
1900	6508	5296	2,651	659,266.55	2483	595,520 acres
1903	2122	1326	483	55,563.66	1307	296,564 acres
1904	N.A.	136	—	—	136	32,640 acres
1906	541	498	271	65,040.00	227	54,480 acres
1908	202	178	59	14,160.00	119	28,560 acres
1909	N.A.	31	—	—	31	7,440 acres
1910	N.A.	86	9	2,160.00	77	18,480 acres
1923	N.A.	172	(cash issue)	41,280.00	—	—

Table 4:1 Scrip Issued to Half-breeds of Manitoba and the North-West Territories: 1885–1923. Based on N. O. Coté (1929),[48] and Goulet-Coté (1888)[49]

breed heads of families to participate in the land grants after all. *But they were not given real estate.* They were given *personal property,* scrip redeemable in land, instead. Thus, on the grounds that the two populations were to be treated equally, the original white settlers were given real estate and the Half-breed family heads were given personal property.[52]

This incident also points out that the Metis were not always given a choice between money scrip and land scrip. In certain scrip issues, such as the grant for Half-breed heads of families in Manitoba, money scrip was all that was offered.

The Non-Recognition of Assignments

The government's refusal to recognize assignments of land scrip did little to discourage speculation. Once the land was located, an assignment could be legally made anyway. In addition, many elaborate methods (mostly involving fraud) were devised to illegally locate such scrip without the original allottee's presence. The Department of the Interior's refusal to investigate charges of fraudulent locations only encouraged the practice. The methods used in these fraudulent locations are discussed in Part 2 of this chapter.

The refusal to recognize assignments was not very effective because all it meant was that the government refused to bestow a patent to the assignee. The assignments were still held to be perfectly legal by the courts. In *Wright vs. Battley*[53] it was determined that, despite the fact that an Order-in-Council prohibited the scrip commissioner from recognizing or accepting assignments of land scrip, and from delivering them to assignees, the sale of the scrip certificate itself was a valid contract, and could not be overturned. The person who became the holder of the scrip did not acquire the Half-breed's rights until the Half-breed located the land and transferred it to the purchaser, but the Half-breed had the right to sell the scrip nevertheless.

> . . . they (the government) might attach to the grant the condition that no one but the Half-breed himself will be recognized and allowed to locate the scrip allotted to him; but they cannot affect the right of the allottee, after he has received his scrip, to do as he chooses with it; he may locate it or not; he may keep it or dispose of it. *When it is in his hands the scrip as a scrip, is his absolute property.*[54] (emphasis added).

While the Half-breed allottee could presumably refuse to locate the scrip after selling it, making it worthless to the purchaser, there was no legal way the Half-breed could force its return. He may not even have had the option of refusing to locate it; a separate court case interpreted the sale of land scrip as an *agreement to locate the scrip* with the scrip certificate acting as security:[55]

> It would appear, therefore, that what is commonly spoken of as a sale of scrip is nothing more than an agreement on the part of the person named in the scrip certificate to appear at the proper office and comply with the regulations and requirements necessary to obtain title for the purchaser to the lands he may select, and the delivery of the scrip certificate merely secures the purchaser against its use by the person named in it to the prejudice of the purchaser.[56]

The Assignment of Minors' Land Rights

When it came to recognizing assignments of a minors' land rights, it appeared there was one law for whites and one law for Half-breeds. For example, in Manitoba a military bounty scrip warrant (which was treated as real estate), was held to automatically pass to a surviving infant son. The surviving spouse or guardian became the administrator of this estate, but was unable to assign or sell it. The Justice Department consistently refused to recognize such assignments.[57] Thus the rights of an infant who had a claim to military bounty were well protected until he became of age. The story was quite different for a Half-breed minor. A provincial statute was passed, "Relating to the Titles of Half-breed Lands" which specifically recognized assignments in all cases involving Half-breed minors:

> . . . In all cases where lands . . . belonging to infant Half-breeds, or to infant children or descendants of Half-breeds . . . have been sold under . . . and where the conveyance of such lands had been executed . . . such sale(s) . . . are hereby declared to be valid, legal and binding, notwithstanding any defect, irregularity or omission in the carrying out and completion of same . . . and whether the same shall have been executed by the parent or guardian, or next friend or master or prothonotary of the court of behalf of said infant . . . [58]

In the North-West Territories, a minor was allowed to locate his or her land scrip, but not allowed to assign it until reaching the age of majority. This protective stance was nullified by the fact that the Department of the Interior would not only recognize locations of a minor's scrip made by the parents or guardians, but would also recognize any assignments made by the guardian after the land was located. Thus the Half-breed minor faced the same lack of protection in the North-West as he did in Manitoba. The result was predictable. Very few Half-breed children had any scrip to locate by the time they reached their majority.

Recognition of Powers of Attorney

The rationale for the recognition of powers of attorney was that it would allow the infirm, aged, or those otherwise unable to appear

before the Half-breed commissions to put forth their claim. But it left a serious loophole through which speculators could operate, and was one of the mechanisms that helped cheat some Half-breeds out of any benefit from their scrip whatsoever.

Speculators often arrived in an area a year or two before the scrip commission did, and they were often the first people to even inform the Half-breeds that a scrip issue was being planned. It was quite simple in these circumstances, to get Half-breeds to sign powers of attorney, since most of them were illiterate, and did not understand the significance of what they were signing. The speculator would offer to act as an agent for the Half-breed, to apply for the scrip and deliver it to the Half-breed, or to buy it from him at an agreed price. But after signing the power of attorney, the Half-breed would never see the speculator again, and would never see the scrip at all.[59]

In 1900, Coté and McLeod, Half-breed Commissioners investigating claims in the District of Saskatchewan, found that most powers of attorney had been obtained many years previous to the sitting of the Commission and with the exception of a few cases, either no consideration whatever had been paid, or the price mentioned in the agreement was far below the current price.[60] The Commissioners used the authority granted them in the Order-in-Council of 13 March, 1900 (which stipulated that powers of attorney or assignments were only to be accepted if they were satisfied that these did not operate to the disadvantage of the Half-breeds) to ensure that the Half-breeds at least received payment. They also insisted that the full current price be paid for the scrip in their presence before delivering the scrip to the holder of a power of attorney.[61]

The commissioners had obtained evidence that the Half-breeds "were ignorant of the purport of the documents they had been induced to sign, and which they most emphatically repudiate".[62] However, they did not feel obligated to refuse recognition of the powers of attorney obtained under these circumstances — they only insisted that the holder of the power of attorney pay the current market value of the scrip to the person he had deceived into signing. The importance of powers of attorney to speculation was recognized and catered to. Also, it should be remembered that many Metis who had unwittingly signed powers of attorney did not even get the protection offered them in this example. They simply lost their scrip completely.

The Application of Scrip to Homesteads and Pre-emptions

This ruling was yet another encouragement to speculation, because it created a large market for scrip; which was in turn created by the nature of homestead regulations.

Homesteads could be cancelled if it was decided that insufficient cultivation and improvements had been carried out, or if the homesteader was forced for some reason to leave the property for longer than six months. Official leave often had to be obtained if the homesteader needed to be absent to engage in wage labour, or for some

other reason. Furthermore, the homesteader could not sell or assign his land until patent was obtained. If his homestead was cancelled, he was entitled to some compensation from the next person who filed on the homestead, but this did not offer much flexibility, nor did the former homesteader have much control over determining the worth of his improvements. Thus, if forced to give up his homestead because of illness, death of spouse, or other reasons, he faced the loss of benefit from one to three years of labour already put into the land. The government was in effect inviting people to gamble several years of hard labour against the rather chancy opportunity of eventually being able to obtain a patent.

Scrip offered a cheap and convenient alternative to this dilemma. A 160 acre scrip could be bought for as little as one half of the market value of the land and then applied to the homestead, or to the pre-emption lands. The owner could then dispose of his homestead as he wished, with little loss.

The Refusal of the Department of the Interior to Investigate Complaints of Fraudulent Locations

The implications of the Department's refusal are obvious: if the government would not investigate these frauds, they could be seen as having been carried out with Government compliance and there was very little pressure on the speculators to stop. There certainly was good evidence that land was being routinely located in a fraudulent manner, and that this was well known to government officials.

> I find that buyers are taking land scrip from halfbreeds, paying them part in cash, the balance to be paid on location but that apparently in many cases no arrangement is made for subsequent location of the scrip by the halfbreed in person . . . it is not a hard matter to get half-breeds who will go before an Agent to whom they are unknown and will be prepared to declare that they are the parties mentioned in the scrips and make the necessary declarations.[63]

Also, the Half-breed Commissioners were quite aware of the number of powers of attorney and assignments which had been obtained fraudulently.[64] These acts of fraud were offences under the criminal code of Canada. Yet the government's reaction was that they could not consider investigating these charges. However, the Crown can initiate legal action under the Criminal Code against law-breakers, and it is not necessary to require that the victims of illegal acts press their own charges.[65]

This was particularly difficult in the case of the Metis who were often too poor to engage a lawyer, or insufficiently knowledgeable of legal proceedings to even know they could press charges on their own.

We will see in Part 2 of this chapter that even when an individual Half-breed did lay charges, as in the Secord case, the government passed a special Statute of Limitations which made the speculator immune from prosecution. The case of R. C. McDonald being absolved of any hint of wrongdoing (and the subsequent passage of a special ruling allowing him to locate the land scrip he acquired from Half-breeds in the U.S.) is another case in point.

SCRIP AND GOVERNMENT POLICY

When assessing the over-all direction and effect of the various scrip programmes, one is struck by the fact that most of the rules, regulations, and Legislative Acts seemed designed to get the scrip out of Metis hands as fast as possible. Defining most Half-breed scrip as personal property, recognizing powers of attorney, allowing Half-breed scrip to be used on homesteads, offering assistance to land companies to deal in scrip, all seemed expressly designed to facilitiate speculation. It may be instructive to examine government policy on a wider scale to consider why this particular method of settling the aboriginal claims of the Half-breeds was chosen.

The government had a clear-cut system of priorities for the North-West, in opening up the country for settlement as quickly and efficiently as possible. From the very beginning, the dominant society had a fear of large blocks of land being tied up by the Metis, stagnating development and an orderly settlement of the North-West. The government wanted to establish a situation where potential settlers and developers would have as much freedom as possible in choosing sites for development. It was felt that if the Metis lands were made inalienable, as the Indian reserves were, that this would completely block any orderly settlement of land.

These concerns were voiced long before any actual scrip programme had ever been contemplated. The earliest concern over the inalienability of Half-breed land grants came from A. Archibald, when he was Lt. Governor of the Province of Manitoba. In a memo to the Secretary of State, 27 December 1870, Archibald made some revealing comments about the land that was eventually to be distributed to the Half-breeds under Section 31 of the Manitoba Act:

> The French, or their leaders, wish the lands to be so tied up, as to prevent them, at all events, for a generation, from passing out of the family of the original grantee. . . The effect would be to lock up a large portion of the land of the country, and exclude it from the improvements going on in localities where the land is unfettered. The whole tendency of modern Legislation . . . is to strike off the barriers which clog the free traffic

> in land. It does not seem to me that it would be wise in the case of Manitoba to reverse a Policy . . . in accord with the habits and thoughts of Modern Life.[66]

Archibald shows that he is perfectly aware of the consequences of his advice; that it is likely that the land would slip from the possession of the Metis within a generation. However, he is not particularly concerned over these consequences:

> He (the Half-breed) might make a bad use of it. In many cases he would do so. He might sell it for a trifle. He might misuse the proceeds . . . Suppose therefore the worst to happen that can happen, supposing the men for whose benefit the land was intended should not know how to value the boon conferred, still the land would find its way into the hands of other settlers. It would be cultivated and improved.[67]

That, in a nut-shell, was the government's primary concern; that the land be cultivated and improved. Little concern was expressed for the Metis, or how they would fit into the over-all scheme. Later, when the scrip programmes came into being, it was obvious they also had been devised to fit with the concept of development of the North West which was held by the dominant eastern society.

There were two major concerns of the federal government in the administration of Dominion Lands. One was the encouragement of a trans-continental railroad, through a system of land grants, and the other was the creation of a free-homestead system in the interests of rapid settlement. The two systems were closely intertwined; the even sections of land, which were originally reserved for sale by the government, were thrown open for homesteading in 1882. This was to both stimulate settlement and enhance the value of the odd-numbered sections reserved for the Canadian Pacific Railroad.[68]

Scrip formed an important part of this over-all plan for development. The existence of a large native population, both Indian and Metis, posed a threat to the orderly settlement of the territory. Scrip presented itself as the ideal solution for the government's problem at least as far as the Metis were concerned. It negated the problem of large blocks of land being tied up for the Metis. The government had enough misgivings about the size of the Indian reserves it had committed itself to, and began a policy of whittling these down as much as possible in later years.[69]

Scrip would allow Metis to select land wherever unclaimed surveyed land was available. Thsoe who were entitled to land but did not want it could sell their scrip easily, and finally there would be no restrictions on the land since clear title was granted. All this, it was hoped, would encourage settlement.

The relationship of Metis and Half-breed scrip to these government policies becomes clear cut when it is remembered that there were many different types of scrip issued: Military Bounty, North West Mounted Police Bounty, Hay scrip, and so on, but of all of these, only Half-breed scrip (especially money scrip) was defined in such a way as to make its transfer from the original grantee's hands as easy as possible.

WHY DID THE METIS SELL?

One question continually arises when studying the various scrip programmes: *why* did so many Metis persist in selling their scrip? Did they really, as so many historians have suggested, simply throw away their chance for long-term security for a short-term gain? Were they really as irresponsible and incapable of planning as had been suggested? A closer inspection reveals that the Metis had many reasons for selling scrip, and that selling it was often the most practical response to local situations at that time.

1. Ironically, the regulations attached to land scrip, which were supposedly there for the grantee's own protection, were one of the reasons that made the scrip almost useless to many Half-breeds. For example, a Metis from Batoche would have had to travel by road and rail for nearly 700 miles in one direction to locate land scrip at the land office in Calgary. The cost of the return journey would be nearly as much as the scrip itself was worth.[70] In this case, scrip payable to bearer and readily marketable, was obviously worth more to the allottee, although it effectively barred him from becoming a land owner. The regulations attached to land scrip often made it impossible for the average Metis of limited means to take advantage of the scrip programmes and take land in extinguishment of his aboriginal rights, no matter how much he may have wanted to.

2. Farming was a risky business and the Metis were often destitute, and faced famine many times. Even before any scrip programmes came into being which would give them title to land, many Metis were forced to abandon the farms they had already started. The issuance of scrip in this case would do little to help a Metis start up a farm again. Lack of a title to land was not the main issue in a case such as the one described by the Metis of Blackfoot Crossing in 1877:

> We took to farming as much as our poverty would allow us. Our little gardens, our few cattle and produce of our hunt supplied us with plenty and we were happy. But the year 1870 came, that year so terrible to remember, in which the dire malady decimated the whole population, and following in its wake was famine. This

> combination of evils ruined us, driving us from our homes and compelling us to lead an entirely nomadic life, as the Indians on the plains. Since that time we have had nothing to depend on but our guns. The game we kill feeds ourselves and our families, and the furs we gather are our only money wherewith to buy clothing, and God knows we do not see how we are to rise above our present condition.[71]

Even after scrip was issued, it became apparent that only those Metis who were comparatively well off could take advantage of it to obtain title and begin to farm. Often, scrip was sold to meet the demands of creditors, or to stave off starvation. D. N. MacDowall, M.P., in a letter to Prime Minister J. J. C. Abbott, explains the situation in these terms:

> If you take the scrip that was issued in 1885, you will find that every Half-breed who was well enough off to hold it, took land scrip for himself and his children and is keeping the land today, and the ones who sold their scrip were only those who had been driven into a state of poverty by the loss of their usual employment of freighting . . . and who were being pressed by their creditors, and in consequence were forced to dispose of their scrip.[72]

3. Even if the Metis did manage to locate and keep their land, they often did not have the capital to set themselves up as farmers. This too was a problem long before any scrip was issued in the North-West.

> The help we implore is farming implements and seed to begin with. We want to settle and till the land, but we have no capital — nothing at all to start with. Also, . . . we beg that the game laws be not too stringent, until such time as we have something else to subsist on; otherwise we shall be unable to live.[73]

There had been some sporadic attempts at training Indians in farming and providing them with implements.[74] These programmes were not particularly successful, but at least an attempt had been made. That was still more than had been done for the Metis. The only attempt to provide the Metis with a parallel service was the limited experiment at St. Paul des Metis.

4. Many of the Metis in the North-West had never even attempted farming prior to the scrip issues, because they were discouraged from doing so by the Hudson's Bay Company. Here, in the Metis' own words, the role of the HBC is described:

> Hunting was plentiful and we were encouraged by the Hudson Bay Company to follow it as much as possible,

> because their only interest in the country was the fur trade. They were the only merchants amongst us, and this unique interest prevented them from giving any encouragement to the husbandmen, and consequentially from bringing farm implements for sale, except very few, which were sold at such an enormous price that the poor man could not think of buying them.[75]

5. The scrip programme disrupted Metis communities and made it very difficult for the Metis to get title to the particular plot of land they had already settled on. The Metis had built up many long-term settlements and communities throughout the North-West.[76] Naturally, they wished to preserve these communities, wherein they had built up their own social networks of friends and relatives. But from the beginning, they faced a concerted effort at breaking their communities down.

They first faced a deliberate attempt at breaking up and dispersing their communities in Manitoba, where Laird, then Minister of the Interior, was actively opposed to the concentration and consolidation of Half-breeds in the settlement belt. Laird wanted this land saved for people he believed would make more efficient farmers, and thought the Half-breed residents should be displaced from their riverlots, and be moved north to the lakes to become fishermen or moved near places where they could provide labour for public works.[77]

The scrip programme operated in the same way. Because scrip could only be located on open Dominion Lands, the chances of a Metis being able to stay on his original farm were rather slim, and even if his own property was untouched, those of his friends and neighbours were bound to fall into other hands. The free-homestead system was applicable at best to barely four-ninths of every township.[78] Only about sixteen of thirty-six sections of a township were open for homestead entry. Hudson's Bay sections, school lands and railway lands took up the rest. Of course, much of these other lands were still for sale, and if a Metis found that his farm which he had been working for many years fell on, say, Hudson's Bay property, he was free to purchase it from the company if he could afford it. But his scrip would not be much help; selling it would probably not bring in enough to pay for his land located on Hudson's Bay or Railroad Lands.

Locating scrip on a new homestead entry meant more than simply pulling up stakes and leaving old property behind. Not only was the Metis leaving his old community, he would have to move to an isolated homestead, surrounded by hostile strangers. The new settlers entering the territory betrayed a contempt and dislike of the Metis and Indian that had not been experienced before with white fur traders and others.[79] Thus, a Metis faced with these alternatives might very well decide that the best thing to do would be to sell the scrip for a quick profit and be done with it.

Most Metis did not want to sign treaties or live on reserves; but at least one group from Cypress Hills felt threatened enough by the influx

of white settlers moving in that they petitioned the government for a separate reserve:

> To the President and the Honourable Members of the Privy Council of the North-West Territories:
>
> . . . Considering that, according to the actual habits and ordinary disposition of the half-breeds in general, it is impossible for them to form any congregation profitable to their families among the white immigrants who are establishing themselves in the North-West Territory:
>
> That it may please your council to obtain for the undersigned a section of land for a special reserve, perpetual and inalienable, upon which they can establish themselves in a permanent manner, and fix their families, to the exclusion of all whites, except such employees as the Government shall find proper to send there, according to the needs of the population.[80]

6. Lands had to be selected from open Dominion Lands and these were often nowhere near the areas the Metis had already settled in. Often the only available lands were miles away from their neighbourhoods. Again, in cases like that, selling scrip for money was the most reasonable response. Even government correspondence with the recipients of such scrip suggest that taking money scrip and selling it would be a better course.[81]

Confining the Metis to open Dominion Lands did not make sense when the patterns of settlement they already had developed is taken into account. Indian reserves, for example, were not necessarily located on open Dominion Lands. In fact, the government preferred not to locate them there, as they interfered with settlement. But that was the only choice the Metis were given. Both the Indian and Metis were being compensated for an aboriginal title, but there certainly was not much flexibility shown the Metis.

7. The long and drawn out procedures for issuing scrip were so complex that many Metis sold their certificates to the speculators who were attending the Half-breed Commission sittings, just to cut the proceedings short. When the Metis Association of Alberta was doing reasearch on land claims in the Pincher Creek area of Alberta, many of the respondents reported that their parents or grandparents had felt that locating scrip had been too much trouble, and that it was easier to obtain land through homesteading. This is borne out by archival data which indicates that in one particular family, ten Metis obtained land through homesteading, as opposed to three through land scrip.[82]

SCRIP AND ABORIGINAL RIGHTS

One of the basic characteristics of aboriginal title is that it cannot be transferred or assigned by those holding it but can only be surrendered to the Crown (see Chapter 3). Although both Metis and Indians claimed Indian title, the compensation awarded to the Metis and Indians in recognition of this Title differed radically. The various benefits accruing to the Indians for the extinguishment of aboriginal rights, such as reserve lands and government services, remained inalienable except to the federal government. But the Metis land grants were made alienable right from the beginning.

Since aboriginal title itself is non-assignable, this raises the question of precisely when the Metis' aboriginal rights were presumed to have been extinguished, since they could not alienate their land until then. The precise moment the Metis' aboriginal rights were extinguished is difficult to determine, since no treaties were signed and no negotiations were held with the Metis or their leaders (other than in Manitoba) to determine if they were voluntarily giving up their Indian Title.

However, one could assume that the individual's aboriginal rights were extinguished as soon as he or she was free to dispose of his land grant. But this freedom varied according to the type of scrip issued. Land scrip, as we have seen, had to be located before the land could be disposed of, while money scrip could freely be assigned. It is possible to argue from the regulations surrounding land scrip, that the individual's Indian Title was not extinguished until he legally obtained title to the land by "locating" the scrip. Possession of the scrip certificate itself was not sufficient; the Half-breed in possession of a land scrip had, in essence, no saleable rights.[83] The scrip certificate itself could be seen as merely a recognition that the person named in it had an aboriginal title which could be extinguished.

This position has allowed the Association of Metis and Non-Status Indians of Saskatchewan to argue that all those titles obtained illegally, that is, by misrepresentation of an individual as that named on a particular scrip (as described in Part 2 of this chapter) are incomplete.[84] The people who received scrip, sold it, but did not "present themselves in person at the proper Lands Office"[85] to obtain legal title to a specific plot of land, *and have not yet had their aboriginal title extinguished.*

Thus, it might be possible to launch a claim for compensation for aboriginal title for all those Half-breeds descended from those who had not extinguished their title.

CONCLUSIONS

The Metis have been consistently portrayed by historians as irresponsible, thoughtless of tomorrow, and incapable of competing with whites.[86] In keeping with this tradition, the failure of the scrip pro-

gramme has always been placed squarely on the shoulders of the Metis themselves: they have been portrayed as being either ignorant of the value of scrip or inherently incapable of planning for the future:

> . . . the Metis disposed of their scrip to eager purchasers, often at ridiculous prices, content to live for the present at the sacrifice of the future. . .[87]

According to this view, the sole reason the scrip programme and earlier land grants failed is because the Metis failed to take advantage of the "generous" offers of the Canadian government. But we have seen many practical reasons why the Metis did not take advantage of the scrip programmes. Farming was not always a viable option, nor did it guarantee as rosy a future as so often indicated by historians. Faced with recurrent crop failures and famine, hampered from even starting up by a lack of implements or capital, gaining title to the land was the least of the problems of the Metis farmer. Homesteaders faced these problems as well, yet historians rarely dwell on the high rate of failure of these homesteads, nor do they tend to blame it on some sort of inherent disability of the settlers. Yet this is often the way the Metis' experience with the scrip programme is interpreted, although the lack of success of Metis farms is not any worse than that of homesteads in general.

The Metis are portrayed as impractical, yet as we have seen, selling scrip was often the most practical response to a difficult and iniquitous situation. It was often too expensive to locate scrip, especially when the nearest Dominion Lands Office was several hundred miles away from the Metis' community. Also, it was not likely that scrip would allow the Metis to gain title to the specific plot of land he had already been cultivating.

The reason the Metis sold their scrip was not due to any inherent weakness in their character; it was due to inherent characteristics of the scrip programme, which operated in such a way as to encourage the passage of scrip from their hands. Whether this was an intended consequence of the scrip programme is not important, but we have seen that it certainly fit in with the government's plans for development of the North-West.

In the next section, we will detail the activities of the Half-breed (or Scrip) Commissions and the process of scrip distribution.

PART 2:
THE PROCESS

PRELUDE TO THE SCRIP COMMISSIONS

In the decade following the passing of the *Manitoba Act* (1870) the Half-breed population in Manitoba and the North-West was living in a state of uncertainty. With the passing of the *Act*, which incorporated many of the demands set forth in Riel's List of Rights, they believed that their needs with regard to land tenure and protection of human rights would be met. But in spite of the fact that provision was made in the *Manitoba Act* for 1.4 million acres of land to be set aside for distribution to Half-breed families, it wasn't until 1875 that the government authorized a plan for the identification of those persons entitled to participate in the land grant.[1] In Manitoba, land was allotted by draws in each parish. When the 1.4 million acres provided for in the *Act* had all been granted, scrip was brought in.

The population of the North-West outside the boundaries of Manitoba had yet to make a settlement with the government about their lands, despite numerous petitions and lobbying on their behalf. The Metis were facing starvation as the buffalo herds began to decrease and the traditional markets for the products of the hunt began to dry up. The question of land ownership began to be a very serious one, as the Metis realized a change of livelihood was necessary. They rallied around their leaders in the North-West Rebellion to force the issue. It was at this time, in March 1885, that the first Half-breed Commission was finally appointed to enumerate the Half-breed population in the North-West and to conduct hearings to determine the eligibility of claims for Half-breed scrip.[2] The Street Commission (named after one of the commissioners) was the first in a series of Royal commissions which functioned for a period of twenty-one years to administer the claims of the Half-breeds, or Metis, of the North-West. Until 1899, the commissioners were authorized to deal with the claims of those born prior to July 15, 1870, the date of transfer of Rupert's Land to the Dominion. The government then agreed to allow claims from all persons born between 15 July 1870 and the end of 1885, since the 1870 date of transfer had little meaning for those outside the original boundaries of the province of Manitoba and failure to include those born during that period would undoubtedly have caused more unrest. In addition, provision was made for the joint Treaty 8 and Scrip Commissions of 1899 to include all individuals born up to the date of the treaty.[3] Half-breeds born prior to that date who had not previously been granted scrip were to be eligible to make a claim for Half-breed scrip. The treaty negotiations took place first and Half-breed claims

followed. The area ceded under Treaty 8 covered 324,000 square miles, the largest area covered by one treaty at that time.[4]

The impetus for the 1899 joint Commissions which covered the Athabasca territory (now northern Alberta) came not only from the native residents in the area. In the late 1890's gold was discovered in the Yukon. With the impending rush of prospectors, businessmen and new settlers who would move into the surrounding area, it became obvious that the government would have to take steps to clear the path for these new arrivals. This entailed making a settlement with the native peoples in the form of a treaty for the Indians and a scrip programme for the Half-breeds. In addition, another factor affecting the decision to deal with the native peoples of the Athabasca district was the federal election of 1900. With the Treaty and Scrip Commissions out of the way, the Half-breed population would be appeased and likely to vote in favour of those politicians who had been sympathetic to their cause. The Half-breeds wielded much influence with the Indians and with this in mind the government decided to deal with them simultaneously and needless to say, efficiently.

THE COMMISSIONS: DESCRIPTION AND POWERS

The North-West Half-breed Commissions of 1885, 1886, and 1887, the joint Scrip and Treaty Commissions of 1899, and the Scrip (or Half-breed) Commissions of the early 1900's were established by federal statute (*Dominion Lands Acts*) or Orders-in-Council. They were Royal Commissions vested with powers which enabled them to deal with the claims of Half-breeds in the North-West in those areas where Indian title had already been ceded. The Minister of the Interior provided them with additional instructions and guidelines and it was to the Minister that the reports of the commissioners were submitted. The rulings which applied to scrip and its distribution came from the Minister of the Interior and his Department and also from the Department of Justice.

Because of the exigencies of travel and communication in this part of the country during this period, it was often necessary for the commissioners to make decisions which amended the powers and authority they had been given. While their mandate was set forth in Ottawa the physical reality of the hearings in the North-West necessitated local on-the-spot decision-making if their work was to proceed according to the planned schedule. This situation was particularly significant during the sittings of the 1899 Commission.

> Provision was first made to satisfy the claims preferred by half-breeds resident on the 15th July, 1870, in the North-West Territories outside of the original limits of the Province of Manitoba, in the Dominion Lands Act, 1879. . . .[5]

An amendment was made to a paragraph in the Act which was assented to in May 1883 and it was this wording which was followed when the first commissions were formed. This gave to the Governor-in-Council the following powers:

> To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, previous to the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions as may be deemed expedient.[6]

To this effect, an Order-in-Council of 30 March 1885 provided for the formation of a Half-breed Commission which would be comprised of three commissioners. These were William Street of London, Ontario who chaired the commission; Roger Goulet of St. Boniface, Manitoba; and Amédée Forget of Regina, in the District of Assiniboia. Forget and Street both had a background in law, while Goulet was a Dominion Lands Surveyor.[7] Mr. N. O. Coté acted as secretary to the commission. Provisions were made for the commission to "satisfy" the Half-breed claims by granting land to the extent of 160 acres or money scrip redeemable in land to the amount of $160 to each Half-breed head of the family who met the requirements of the *Dominion Lands Act* of 1883 (Clause 81, sub-clause e) and who was in residence and in "*bona fide* and undisputed occupation" of land in 1885. If the land area occupied was smaller than 160 acres, the remainder (to the extent of 160 acres) was granted. If the individual was not in *bona fide* occupation of land at that time, scrip was to be issued for up to $160 redeemable in land. For the children of Half-breed heads of families a grant for land to make up 240 acres or scrip redeemable in land to the extent of $240 was granted. In actuality, the Half-breeds were later allowed to locate on open Dominion lands *near* their old land, but not necessarily on it. This was provided for in later Orders-in-Council. An enumeration of the Half-breeds resident in the North-West Territories and the part of Manitoba not included within the original boundaries of the province in 1870 was to take place.

The commissioners had the authority to "summon witnesses before them by subpoena issued by them, to examine such witnesses under oath, and generally do all things and exercise all powers and functions provided for by the said Clause 83 of the *Dominion Lands Act*, 1883."[8] Once their task was completed, a report was submitted to the Minister of the Interior detailing the places the commission held sittings, the number of applications and claims registered, the number of certificates issued, and recommendations for future Half-breed Commissions.[9] The commissioners were aware that many people were unable to attend the sittings and that the commission missed a number of communities.

In the following year, by Order-in-Council dated 1 March 1886, a second commission was appointed with Mr. Roger Goulet as the sole commissioner.[10] His mandate was to hear the claims of those individuals unable to appear before the commission of the previous year, in addition to others, as time and weather conditions permitted. As in the 1885 mandate of the commissioners, Goulet was authorized to summon witnesses by subpoena, examine the witnesses under oath, and carry out all of the duties previously described. Goulet submitted his report on 12 January 1887.[11] He was accompanied by N. O. Coté (secretary) and George Duck (clerk) and together they investigated 1,414 applications. Goulet noted in his report that this number included a few claims made by "original white settlers" of the North-West. Also, "the majority of claims which have been preferred . . . are from Half-breeds who were previously in receipt of annuities as Indians."[12] As was the case in 1885, the commission was unable to visit a number of communities and recommended that the next commission leave earlier the following spring to facilitate their travels.

Goulet served again as a commissioner for the Half-breed Commission of 1887, along with N. O. Coté, previously the secretary of the commissions. With the experience gained in 1885 and 1886 it was felt that Coté was knowledgeable enough to take on the position of Commissioner.[13] The secretary to this commission was Mr. James Anderson. The report from the Privy Council stated in part:

> The Minister (of the Interior) is of the opinion that it is expedient that the work of extinguishing the Indian title of the Half-breeds who were residents on the 15th July, 1870, of those portions of the Territories since ceded by the Indians under treaty with the Government of Canada, should be completed at as early a day as possible . . . and that Messrs. Goulet and Coté during the coming season be empowered to investigate such claims and the claims preferred by *'Original White Settlers'* who went to any part of the North-West Territories, in which the Indian title has been extinguished, between the years 1813 and 1835, both inclusive, or the children of such persons, not being Half-breeds, born and living on the 26th May, 1874, and residing therein at that date.[14]

The final report of Commissioners Goulet and Coté appeared in the Sessional Papers of 1888, as part of the Annual Report of the Deparment of the Interior for 1887 and along with the report on the *Manitoba Act* claims "which at one time formed an important feature of the business of the Department" and which it was noted "having been nearly all finally closed."[15] The report submitted on 10 January 1888 stated that the investigation had been completed as authorized, and a total of 565 claims had been considered. A total of 490 money scrips and thirteen land scrips were granted.[16]

At the end of 1888 a commissioner was appointed to investigate the claims of Half-breeds in the newly ceded area of the Treaty 6 adhesion near Green Lake, including Montreal Lake and Lac La Ronge.[17] Of the fifty-six new claims considered here, fifty-two were allowed and 116 scrip certificates were issued.[18]

In 1889, additional Orders-in-Council authorized the consideration of claims made by Half-breeds in areas where Indian title had not previously been ceded.[19] These also provided for claims to be made by those Half-breeds unable to appear before the North-West Half-breed Commissions of 1885-87. A cut-off date of 1 May 1886 for the Manitoba scrip grant was waived in order for some late claims to be made. The closing date for hearing all North-West Half-breed claims and "original white settler" claims was set for 1 May 1894 by another Order-in-Council.[20]

A petition originated in the Saskatchewan district in 1895 which dealt with a number of concerns common to Half-breeds in the North-West regarding the scrip issues.[21] It came after the Half-breed Commissions of the 1880's when people were aware of the drawbacks of the system established for the issue of scrip and speaks to the issue of the distinct quality of Half-breed claims.

> It is well known that in the North-West the settlements are more sparse, distances greater, and means of communication less than they were in Manitoba, so that fully as much time should have been given the half-breeds of the West to file their claims as in Manitoba.
>
> . . . a policy has been pursued with the Indians totally separate and distinct from that taken with the half-breeds. The latter have been dealt with and compensated individually as having personal political rights, which indeed they did have, and exercise, prior to the transfer. . . .
>
> The distinction was a natural one, founded upon the fact that these two classes were in reality separate peoples, and was established in practice by the government.
>
> The government then took the position that the claims could not be approved because the territory was not yet ceded by the Indians.
>
> Manifestly, this is no answer. It has never been suggested that it is the duty of these half-breeds to procure treaties by the Indians with the Government. They have as yet no representative in the House. It is the duty of the government to proceed. . . .[22]

In the Scrip Commissions which were to follow, however, it was clearly set forth that the Indians were to be dealt with first and the treaty signed prior to the hearings of the Half-breed Commission. The government exerted pressure on the Half-breed population to persuade the Indians to sign the treaties as quickly as possible.

It wasn't until 1899 that the claims of Half-breeds in the Athabasca district were considered. It was at this time that the decision was made for a joint commission to be established which would deal with the settling of the claims of both the Indians and the Metis or Half-breeds. Also, it was provided by the same Order-in-Council that the claims of those North-West Half-breeds born between 15 July 1870 and the end of 1885 be considered.[23] This was done after numerous submissions by the North-West Territories Legislative Assembly and other concerned residents of the area.[24] It was also pointed out in the Order-in-Council that the Minister of the Interior foresaw problems arising if all Half-breeds resident in the North-West were not to be considered in the claims process. If the previous stipulations were to be followed, only those persons twenty-nine years or older would be able to make application to the commission in 1899 (i.e., those born prior to 16 July 1870). The Minister stated that:

> . . . to appoint Commissioners to deal with the Half-breeds of the aforesaid territory within the scope of this provision would tend rather to disturb than to satisfy the Half-breeds, and would certainly cause them to so use their great influence with the Indians as to make it extremely difficult, if not impossible, to negotiate a Treaty.
>
> The Minister submits that it seems to him moreover that the Half-breeds of that territory referred to would have good reason to be dissatisfied. . . . Whatever rights they have, they have in virtue of their Indian blood. . . .
>
> It is obvious that while differing in degree Indian and Half-breed rights in an unceded territory must be co-existent, and should be properly extinguished at the same time.[25]

The Half-breed Commissioners appointed were James Walker of Calgary and James A. Coté of Ottawa, an officer of the Department of the Interior. Charles Mair and J. P. Prudhomme were appointed as clerks. The mandate of the commissioners was to investigate the Half-breed claims and determine their acceptability, to issue scrip certificates to those allowed, to do an enumeration of the certificates and finally to submit a report on their work to the Minister of the Interior. As the commissioners before them, they were authorized to summon witnesses by subpoena and demand the production of papers and

supporting documents to accompany applications. The commissioners were directed to work in concert with the Indian or Treaty Commissioners for Treaty 8 who were under the chairmanship of David Laird.

In addition to the commissioners, secretaries and clerks of the commissions were others who were essential to the process. These included the interpreters (generally Half-breeds), advisors (the priests who were usually in attendance at the Treaty Commissions) and the cooks who provided the meals. The interpreters and advisors worked closely with the commissioners in the on-the-site decision-making. Their influence was often substantial when decisions were made on whether someone was to enter treaty as an Indian or to take scrip as a Half-breed. Though at the time an individual might not have been particularly concerned about this decision, the long-range implications were sometimes devastating.

The work of the joint Commissions began at Lesser Slave Lake and the treaty was signed on 21 June 1899. The treaty negotiations took only a few days, while the sitting of the Half-breed commissioners dragged on considerably longer. Scrip was issued for either $240 or 240 acres of land to Half-breed heads of families and to their children. The prior distinction of granting $160 or 160 acres to family heads and $240 or 240 acres to the children was dropped at this time.[26]

The report of the Commissioners, dated 30 September 1899, indicates that 1,195 scrip certificates for money and 48 land scrip certificates were issued. The commissioners stated that the entire Half-breed population of the just-ceded Treaty 8 area had been satisfactorily dealt with.[27]

In March 1900 commissioners were again appointed to hear the claims of Half-breeds in the territories.[28] The Minister of the Interior in a report dated 15 February 1900 expressed concern over the extensive nature of the work of the previous commission and questioned if it was indeed possible that all of the claims could have been given a hearing. The minister also urged that the children born of Manitoba Half-breeds in the North-West Territories between 1870 and 1885 be granted scrip, in keeping with the granting of scrip to the children of North-West Half-breeds. The Minister was of the opinion that

> . . . if they be not given scrip they will consider that they have been unfairly dealt with and will continue to agitate for what they believe they are entitled to; and it has been submitted that as the issue of scrip is a measure of public policy for the purpose of satisfying a class of the community who have certain aboriginal rights which it is in the general interest that that class should recognize as having been properly and fully extinguished, it is the part of wisdom to go beyond the letter of the obligating of the State towards them in order to ensure the satisfaction of all the Half-breeds. . . .[29]

Because of the distances involved and the number of claims to be heard, the Minister recommended that two commissions be established, one to hear claims in the districts of Alberta and Assiniboia, the other in Saskatchewan and that portion of Manitoba not within the original boundaries. The commissioners for Alberta and Assiniboia were James A. McKenna of Ottawa, an officer in the Indian Affairs Department, and James Walker of Calgary. Their mandate was to issue scrip certificates for acceptable claims made "by or on behalf of Half-breeds born in the organized districts of the North-West Territories between the 15th July 1870 and the end of the year 1885."[30] Scrip certificates redeemable in land for up to $240 or "at the option of the grantee" a scrip certificate for land in the amount of 240 acres were to be issued and upon completion of this work, an enumeration of the certificates was to be taken and a report on the work submitted to the Minister of the Interior as in the past. Like the commissioners before them, they were authorized to subpoena persons before them, to take evidence under oath, and to compel the production of supporting documents.

Two other commissioners were appointed to deal with the Saskatchewan and Manitoba claims. These were J. A. Coté[31] of Ottawa and S. McLeod, a member of the North-West Territories Legislative Assembly from Prince Albert. They were authorized to hear claims following the same guidelines described above for the McKenna-Walker Commission.

In addition to these responsibilities, these commissioners were authorized to hear the claims of those Half-breeds in the Athabasca district who were unable to present their claims during the sittings of the 1899 Commission. Their authority was the same as that of the 1899 commissioners.

The final report of McKenna and Walker was submitted to Clifford Sifton, Minister of the Interior, on 11 March 1901. From May until December 1900 they dealt with 3,505 applications which represented claims made by or on behalf of 4,397 Half-breeds.[32] A total of 1,315 scrip certificates were issued for money scrip and 1,991 for land scrip. As the value of land in the North-West increased to more than $1 per acre, land scrips became more valuable and were more in demand. Certificates for shares of scrip were also granted in favour of the heirs of deceased Half-breeds. The claims of Athabasca Half-breeds were small in number and were included in these figures by the commissioners. Not all claims could be heard at the scheduled points and times and it was recommended that a few sittings be held in the summer of 1901 in order for these to be dealt with.

Claims of Athabasca Half-breeds were also heard by James A. Macrae, the commissioner appointed to make the Treaty 8 annuity payments in the district in 1900.[33] Macrae took adhesions to the treaty at Fort St. John and Fort Resolution, locations where negotiations had not taken place the previous year. Half-breed claims were investigated and reported to both the Minister of the Interior and the Superintendent General of Indian Affairs. Macrae's powers were the same as those of the commissioners before him.

The work begun by the Half-breed Commissioners in the mid-1880's continued for more than two decades after the turn of the century. The claims of those persons missed by previous commissions were dealt with throughout the North-West, including those in the areas ceded by Treaties 5, 8, and 10.

James McKenna was re-appointed as a commissioner in March 1901[34] to continue the work carried out in 1900 in the Territories and in the portion of Manitoba lying outside of the 1870 boundaries. His duties and authority were the same as those set forth in the Order-in-Council of 2 March 1900. The Minister recommended at this time

> . . . that public notice be given to the effect that all claims to land or scrip on account of the aboriginal rights of Half-breeds in the portion of Manitoba aforesaid and in the North-West Territories that are not presented to Commissioner McKenna with the necessary proof be barred.[35]

This was based on his consideration that

> . . . the provision which it is herein proposed to make for the hearing and adjudication upon claims yet outstanding ample opportunity will have given the Half-breeds to have all their claims disposed of.[36]

Two reports were submitted by McKenna, the preliminary one on 31 May 1901 which stated that he had dealt with the claims reserved from the previous year. The reasons for the disallowed claims were given and his report was accepted in June 1901.[37] The final report was not submitted until 12 March 1903 and it dealt with the Manitoba claims.[38]

Between 1903 and 1906, some further Half-breed claims were heard and considered, albeit on a much smaller scale than in previous years. In February 1903, Inspector H. Conroy of the Treaty 8 area was authorized to hear the claims of Half-breeds who had been unable to present their claims in previous years in the Lac La Biche and Lesser Slave Lake areas.[39]

In 1906, J. A. McKenna was appointed as the commissioner responsible for negotiating Treaty 10 (nothern Saskatchewan and a small area of eastern Alberta) and for investigating Half-breed claims in that territory.[40] His powers were the same as those given for the 1899 commission, to issue scrip "for $240 redeemable at its face value in the purchase of Dominion land, or at the option of the claimants, scrip for 240 acres of land."[41] The date of the treaty was the date governing the issues of scrip for Half-breeds resident in the territory whose claims had not been settled previously. Upon the completion of his work in the 1906 season, the commissioner recommended that those claims which could not be heard by him be investigated the following year. This was carried through and authorized by an Order-in-Council of 6 April 1907.

T. Borthwick (an Indian agent at Mistawasis) was appointed to take adhesions of Indians in the Treaty 10 area, and to hear the claims of Half-breeds in that area and report upon them to the Minister of the Interior. Borthwick took evidence on 202 claims[42] of which 178 were allowed by the Minister who authorized the issue of scrip in early 1908.[43]

During 1909, H. A. Conroy (formerly part of the 1899 joint Commissions) was authorized to investigate additional Half-breed claims in the Athabasca district[44] and J. Semmens, an Indian Department Inspector from Stonewall, Manitoba continued to hear claims in the Treaty 5 adhesion area.[45]

Between 1911 and 1921 there was very little activity going on concerning Half-breed claims for scrip. It wasn't until the planning for the negotiations for Treaty 11 in the MacKenzie River district that authorization was again given for the settlement of outstanding claims by Half-breeds. In April 1921, Inspector Conroy was appointed to negotiate the treaty with the Indians of that area and to investigate the claims of Half-breeds in the ceded territory. He was instructed to issue payments of $240 in lieu of scrip.[46] In 1924 and 1925 subsequent orders dealing with Half-breed claims specified the granting of cash instead of scrip,[47] which had been the usual means of settlement in the past. In the Treaty 8 area which is now northern Alberta, the option of scrip was removed in 1912 and Half-breed claims were dealt with by admission to Treaty.

THE PROCESS OF SCRIP DISTRIBUTION

The distribution system was a complex one. The authorization for a commission to hold hearings for Half-breed claims in the North-West was just the first step. The commissioners had to be appointed, secretaries and clerks selected, and a tentative schedule and plan for travel set up. Advance notices of the locations and dates of hearings had to be given. This involved the sending out of notices to the areas to be visited and the posting of these notices in appropriate places, including church halls, land offices and trading posts. Advertisements were placed in newspapers in the larger centres. The clergy, traders and government employees were expected to pass on information about an upcoming commission to Half-breeds with whom they were in contact. As distances were greater in the North-West than in Manitoba the dissemination of this information took more time and involved more work. There was also a greater chance for individuals in remote areas to miss hearing the news of an upcoming commission.

It was the responsibility of the individuals who had claims to present themselves at the sittings of the commissions. If it was not possible for them to be present for the commission one year, then it was assumed that they would appear in the following year and eventually all claims would be heard to the satisfaction of the government.

The work of the 1899 joint Treaty and Scrip Commissions had originally been scheduled for 1898 but was postponed one year because there had not been sufficient time for informing the Indians about the negotiations.

Once the schedule was arranged the commissioners would set forth with their staff and provisions, travelling by land and by boat along the rivers of the North-West. The trips would begin in the spring and generally continue into the fall or winter as weather permitted. Sittings would be held at a number of pre-arranged sites and sometimes more informally en route. The schedules would be followed as accurately as possible, but it was not unusual for a commission to be delayed several days by inclement weather or the inability to meet with the people they had intended to.

The commission sittings or hearings followed a specific plan. The steps involved were generally the same for the commissions in the 1880's. In 1899 there were some innovative factors, first among them being the existence of the joint Treaty and Scrip Commissions which set out together and worked closely in the determination of the policy to be followed at Lesser Slave Lake and thereafter. The description of the process of scrip distribution which follows pertains to all of the commissions but makes specific reference to the 1899 hearings in the Athabasca district. It was these which had the most dramatic effects on the Metis population of northern Alberta.

What was common to all of the Half-breed Commissions was the abundance of paperwork involved in the claims process. Applications were made by individuals and had to be supplemented by supporting documents. The commissioners were authorized to summon witnesses by subpoena and to compel people to produce documents. Affadavits were frequently used to confirm identity and personal background such as the date and place of birth. Much of this activity took place through the use of interpreters because many Half-breeds were unfamiliar with the English language. This prolonged the process even more, as each application had to be dealt with individually, unlike the treaties which were negotiated with a chief or a few headmen on behalf of an entire band. Tents were set up and equipped with chairs and tables at which the commissioners sat to take applications and to hear the evidence presented (see Fig. 4.6 - 4.7). A fairly detailed account of the 1899 Commission was provided by Charles Mair, who, along with J. P. Prudhomme served as a secretary to the commission, which was accompanied by Inspector Snyder and his RCMP detachment.[48] This commission began work at Lesser Slave Lake at the community of Stony Point (now Grouard). The Treaty Commission had taken five days to complete its work which ended on the 24th of June and then the work of the Scrip Commission began and lasted for several days.

> The 'scrip tent', as it was called, a large marquee fitted up as an office, had been pitched with the other tents when the camp was made, and in this the half-breeds

> held a crowded meeting to talk over the terms, and to collate their own opinions as to the form of scrip issue they most desired.[49]
>
> This was a slow process, involving in every case a careful search of the five elephant folios containing the records of the bygone issues of scrip in Manitoba and the organized Territories.[50]

In addition to the interpreters who acted as go-betweens for the commissioners and the claimants, were the members of the clergy who accompanied the commissions and acted as advisors to both the Indians and the Half-breeds. From their knowledge of what resulted in the case of the Manitoba Half-breeds and those who took part in the commissions of the 1880's, they were more inclined to impress upon the claimants the long-lasting benefits of treaty in favour of scrip. Their motives, it must be noted, were not entirely unselfish, as the Churches stood to gain more from Treaty-signing than from scrip issue. The land grants for Indian reserves and schools were important for the very existence and survival of the Churches.[51] Monies would be provided for the destitute Treaty Indians, thus lessening the burden on the Church and with the Indians (or Half-breeds) settled onto reserves, European settlement could proceed. This in turn would increase the size of the congregation and bring more money into the Church.

Another group present at the commission sittings were the speculators. They travelled closely behind the commissioners and were available to relieve the Half-breeds of their scrip almost as soon as it was received, if not by previous arrangement. These individuals and their activities will be discussed below.

As we can see, a number of individuals representing various interest groups were present and actively involved in the proceedings. The Metis (or Half-breed) population had a number of influences to contend with when making application for scrip.

Once an application was made and the necessary supplementary documents presented, the claim was considered. One of three decisions could be made; the claim could be allowed, reserved (deferred) or disallowed (rejected). If allowed, a certificate for scrip (land or money) would be issued to the claimant. The certificate was an entitlement to scrip and had to be submitted to the Department of the Interior by the individual or by a financial institution. The certificate was to be accompanied by a request for the issue of a scrip note. The certificates were forwarded to the Department for processing and a scrip note was issued for land (in acres) or money (redeemable in land). The note was forwarded to the allottee (claimant) or to an individual to whom he had delegated power of attorney.

If the scrip note was to be directly applied to the acquisition of land, it had to be presented at a Dominion Lands office. The land was then identified or located and the scrip note was registered for the land. In due course, the land patent would be granted.

All of these steps took considerable time. Sometimes weeks or months (and in some cases, years) would pass while patents were being registered. The time involved, coupled with the complexity of the process, provided an inducement for the speculation which accompanied the issue of scrip to Half-breeds.

Claims which were "reserved" were taken to Ottawa where they could be reviewed and considered by the Minister of the Interior. In the report on the 1900 Commission which dealt with claims in Assiniboia, Alberta and Athabasca, Commissioners McKenna and Walker reserved claims for the following reasons: insufficient evidence, claimant born prior to 15 July 1870, foreign residence, claimant born in Manitoba, non-appearance of rightful claimants, and questions connected with Indian treaties.[52] Claims were disallowed for a number of reasons.[53] If a claimant had already received scrip after application to a previous commission, his claim was considered to be settled. Also, if an individual was in treaty at the time of application, his claim could not be accepted. Since it was possible for people to move into and out of treaty with relative ease, the rules governing the issue of scrip to such persons were inherently complex.

The process of scrip distribution was more complicated and cumbersome than it had to be. While the government purported to be protecting the Half-breed population by the enactment of legislation and the passing of rulings which were at least in theory of a protective nature, the reality of the process was a different matter.

THE REALITY OF SCRIP DISTRIBUTION: SPECULATION IN HALF—BREED SCRIP

It may appear from the foregoing discussion that the scrip programme was a plausible one which settled once and for all the claims of the Half-breeds in what are today the prairie provinces and the North-West Territories. Unfortunately, we are unable to paint such a rosy picture. The reality of the scrip programme is that it was accompanied by the unscrupulous activities of speculators working in most instances with the blessings of government policy makers whose main concern was the fostering the Dominion Lands Policy and the development of Western Canada. The scrip programmes did not benefit the Half-breeds for whom they were designed. They did benefit those who purchased Half-breed scrip at extremely low prices and later sold it at higher ones or amassed enough to apply it to large tracts of land. This in turn promoted immigration and settlement in the West, the growth of business and of the economy.

> It was in the government's interest to have some land pass into the hands of private speculators, with no strings attached. This accomplished several goals. It

> rewarded political supporters and it encouraged them to recruit settlers to turn a profit on their land acquisitions. It also encouraged the investment of private capital and in the case of bank speculation, encouraged the creation of capital required for development.[54]

Speculation in Half-breed scrip was conducted with the government's knowledge and frequently with government assistance. Schedules of the Half-breed Commission hearings were made available to the speculators and it was common practice for them to travel along with the commissioners. In relating some of his experiences while working for the banking firm of Alloway and Champion in Winnipeg in the early 1900's, Peter Lowe described Charles Alloway's technique as a speculator:

> . . . money and his own food were the only commodities he carried. Thousands of dollars were concealed in his clothing, and what could not be taken care of in this way, was carried in a bundle and used at night as a pillow.[55]

Alloway and Champion did not limit themselves to Manitoba, but travelled throughout the North-West including the Athabasca district during the period of the scrip commissions, procuring scrip which would later be used in the purchase of land. They worked closely with land companies and colonization agents in bringing people into the West and settling them on lands acquired through the use of Half-breed scrip. Since the scrip was generally bought from the Half-breeds for a mere fraction of its value, much profit remained to be made by this speculation.

The speculators were kept abreast of the current prices for scrip, and advertisements quoting the latest prices were displayed in Dominion Lands offices. Half-breed scrip became big business and a significant means of fostering economic growth. William Pearce, never one to be sympathetic to the cause of the Half-breeds, took the side of the government in matters concerning Half-breed rights. As a Dominion Lands surveyor and general advisor (1874-84) and as Superintendent of Mines in Calgary (1884), Pearce was knowledgeable about the speculative activities associated with Half-breed scrip and saw no reason for the supplementary grant to those born between 1870 and 1885, which was eventually allowed in 1899. In 1896 he wrote:

> In this matter of scrip transactions in Manitoba from 1874 to 1878, I am not speaking at hazard; but from personal knowledge at a time when probably 80 per cent of the business transactions in that Province were more or less affected by scrip and when 99 per cent of the people who bought or sold anything took a hand in

> scrip transactions. From the highest to the lowest, in politics, ecclesiastical circles, business professions and employees of all kinds. Though it helped very largely to create good times in the Province, the demoralization in honest and straight dealing that arose out of it, both as regards whites and Half-breeds, was felt severely for many years. . . .[56]

It becomes apparent from these and other descriptions of the situation that anyone associated with the issue of scrip was aware of the business activities attending it. Little was done, however, to curtail them.

As a result, scrip was only of ephemeral value to the Half-breed population. It passed through people's hands only to be replaced with a fraction of its value in cash which would subsequently be spent in a short time. No long-lasting benefits were experienced by the Half-breed, and having taken scrip, he was then expected to get out of the way so as not to discourage or delay the arrival of white settlers. Unlike the settlements made with the Indians, whose treaties provided for a binding and long-lasting relationship with the federal government, the Half-breed scrip programmes were designed to extinguish the claims of the Half-breeds and terminate whatever special rights had been acknowledged for them in the *Manitoba Act*, the *Dominion Lands Act* and Orders-in-Council.

It is also significant to note that Half-breed claims were dealt with on an individual basis with each person making application independently. This in itself represents a denial of Metis nationhood and political identity and most certainly facilitated the work of speculators by enabling them to approach and make a deal with one person at a time.

Speaking out on speculation in Half-breed scrip, Father Lacombe wrote to the Winnipeg Free Press in 1896 urging more government protection for the Half-breeds and at the same time revealing his own prejudices and attitudes:

> The law of the land would not permit a man to retain property taken from a minor; but it allows sharks to use legal devices to rob unwary people of their property. No sooner did it become known that the government of Canada contemplated issuing scrip to half-breeds, than the sharks set to work to devise safe means to rob them.
>
> They (the Half-breeds) are children in very fact and as such should be protected and cared for by the government.[57]

Shortly after this letter appeared, a public notice was posted by the Department of the Interior which stated that if grants to Half-breeds

Fig. 4.6 Scrip Commission meeting at Lesser Slave Lake, 1899. L—R: J. P. Prudhomme, Major James Walker, J. A. Coté and Charles Mair. R.C.M.P. Museum, Regina

born in the Territories between 1870 and 1885 were made, "care would be taken that the scrip should be delivered to the claimants personally."[58] The reality that has been described in a number of firsthand accounts of the speculation which occurred.

Writing to the Commissioner of Dominion Lands in Winnipeg, R. A. Ruttan of the Edmonton Dominion Lands office expressed concern over the use of powers of attorney by speculators in order to obtain large quantities of Half-breed scrip. He was aware of the activities of a Calgary firm involved in dealings with Half-breeds regarding the supplemental grant to those born between 15 July 1870 and 31 December 1885. Three years later, in 1899, the supplemental grant was approved. Ruttan's description of the activities of the speculators elucidates a situation which was familiar to many observers of the time.

> Brokers hoping to make money out of the scrip are agitating for a supplemental grant. They hope to excite the Half-breed to an interest in the matter by agreeing to purchase; their expectation is probably that if Half-Breed (sic) move strongly the Government will yield. In the meanwhile the brokers are getting these powers of Attorney signed by the prospective beneficiaries. To the execution of the instrument the Half-Breed will be lured by an assurance that it is a 'petition' or 'Census form'. He will be told if he will get his share of scrip if the Government issues it — I daresay the present process is much like the old one under which these people were swindled right and left and everywhere to the fullest extent. I do not believe that the Half-Breed allottee benefitted to the extent of 20% of the original grant.[59]

W. P. Fillmore has recounted his personal experiences as a scrip buyer in 1905-6, during the Treaty 10 negotiations in northern Saskatchewan chaired by J. A. McKenna. Over a month was spent in the Ile-a-la-Cross area. Fillmore recalled:

> The Indian Commissioner sat in a large tent where he interviewed the natives and then decided which of them would take treaty and which would be issued half-breed scrip. . . .
>
> After my return to Winnipeg I made some inquiries, and I was told that the practice was for the holder of a scrip to pick out some local Indian or half-breed and take him to the Dominion Land Office and present him as the person named in the scrip. The holder of the scrip, pretending to be the agent of the half-breed, would designate the land. The patent to this land would then be issued, and the scrip holder would then have to

Fig. 4.7 Interior of Scrip Commission tent at Lesser Slave Lake, 1899. Glenbow-Alberta Institute

> get title. Presumably, this was done by completing and registering the Quit Claim Deed.[60]

Fillmore was aware that private bankers and real estate agents were involved in these activities and that a large profit was made.

J. A. Gregory, M.L.A. from The Battlefords (1938), spoke to the question of Metis claims in Saskatchewan and the role of speculation in relieving the Metis of their lands:

> . . . the Half-breed was taken by the speculator who had purchased his scrip to the most convenient or most complaisant Dominion Land Agent in certain districts. The necessary affadavits were administered to him, but the actual descriptions of land were left blank to be filled in at the convenience of the speculator, who then had only to apply the scrip upon whatever piece of available land he desired, and then make application to the government for title which was issued in due course. There was little secret about these practices.[61]

The number of advertisements found in the major newspapers testifies to this. Scrip was openly advertised in the Edmonton Bulletin and other newspapers during the period of the existence of the scrip commissions. Anyone interested in purchasing scrip could find the names of dealers in his daily newspaper.

In contrast to reports such as these, N. O. Coté remarked on the protection offered by the government for the Half-breeds.

> The Department has always been most careful in dealing with halfbreed locations and has made every effort . . . to protect the halfbreed grantees both in the matter of the actual location of the scrip on the land and in regard to assigning the land upon which the scrip has been located.[62]

The government was also busy in providing direct assistance to the large scrip buyers. A banking service for their accounts was established by the Department of the Interior, enabling them to apply their scrips as payment for land in the various Dominion Lands Agencies. Scrip could be deposited by the speculators and drawn upon when required for the payment of lands.[63] It was a most convenient banking arrangement which made the work of the speculators as efficient as possible. In addition, Dominion Lands Agents were directed to display the names of these speculators in their offices, thus enabling potential buyers to be aware of who had scrip for sale.[64] Government compliance with scrip speculation can hardly be denied.

One might question why the Half-breeds sold their scrip to the speculators. There are a number of reasons, some of which were

Fig. 4.8 J. A. Coté of the Scrip Commission and Father Albert Lacombe, with the Treaty Commission, at Athabasca Landing, 1899.
R.C.M.P. Museum, Regina

discussed in Part 1. For many of them, a paper certificate entitling them to a plot of land in areas where there were open Dominion Lands was meaningless. This is particularly true for those living in the northern and more remote areas where hunting, trapping and fishing constituted the primary mode of subsistence. An area of 160 or 240 acres would not provide enough space for these activities to be profitably carried out and open Dominion Lands were generally not found in such locations. In some areas Half-breeds were engaged in stock-raising as a supplementary means of subsistence, and protection of their hay lands was an additional necessity. Declarations to this effect were submitted to the Half-breed Commissioners.

For many, to take the scrip and apply it to land would have meant relocating to a more southerly area and taking up farming. Such a change in livelihood was not a desirable one. It would also have meant settling down permanently on one plot of land, which would represent a major deviation in lifestyle and subsistence to a hunter or trapper dependent on fluctuating animal resources. Prior to the largescale expansion of settlement in the West, the native populations had more freedom of movement and did not feel threatened if they left a hunting territory for a while. Slowly, this freedom was encroached upon. Big Joe Cardinal of Grouard recalls that ". . . the Metis people — there were more trappers in those days. They weren't farmers, so they left the land because they thought that they owned the land."[65] Sadly, this freedom to leave land and later return was disappearing.

Many Half-breed people saw what had happened to Indians who had gone into treaty. Destitution and starvation was not uncommon in the 1880's and 1890's. By taking scrip and then selling it, the Half-breeds would realize an immediate cash return with which to buy food and other provisions. They would remain less dependent on the government and would not be encumbered with the restrictions placed upon Treaty Indians living on reserves.

The Half-breeds themselves were often poor and the long-term benefits of setting oneself up in farming could hardly be imagined if one was in immediate need of food and clothing. Another problem associated with poverty was illiteracy. The majority of Half-breeds submitting claims to the commissions were unfamiliar with the English language. Working through interpreters proved to be unsatisfactory and undoubtedly contributed to the ease with which the speculators bought scrip from those unsuspecting of their motives.

There were problems with the way the interpreters conveyed the meaning of the proceedings and the implications these could have. One interpreter whose name still comes up in the Lesser Slave Lake area is Daniel Ferguson. Many Metis people from that area recall their parents speaking about his involvement in the Half-breed Commission at the turn of the century and tempers still flare over the consequences of that Commission. Henry Tomkins, a board member of the MAA, recalls how Ferguson decided, for the benefit of the 1899 Commission, who was to be regarded as an Indian, and who was a Half-breed.

Fig. 4.9 Half-breed Scrip Commission at Grand Rapids, 1899. L—R Seated: Major James Walker and J. A. Coté, Commissioners; Standing: J. P. Prudhomme and Charles Mair, Secretaries. R.C.M.P. Museum, Regina

Mr. Tomkins has stated: "That's why Felix Andrews used to curse that guy forever. . . . He didn't want scrip. He wanted to be a Treaty (Indian) because he was living here on Sucker Creek, and the treaty was made there by the Lake."[66] Others from this area suspect that the interpreters made deals or received some sort of pay-off for each person they designated as a Half-breed scrip claimant.[67] Considering the amount of speculation occurring at this time, their suspicions may have some basis in fact.

It is not difficult to come across people familiar with episodes involving the theft of scrip certificates from unsuspecting Half-breeds. This one, as told by Big Joe Cardinal is unfortunately typical.

> Jim Cornwall went up there. They went up there with my dad, interpreting more to the old lady. . . . They asked the old lady. They said: 'Give us that scrip and we'll bring a lot of money for you.' 'Well,' the old lady said, ' I don't know.' The old man was cutting hay just across the river from there. 'Well, let me see.' Jim Cornwall was saying. So he took it. 'Yeah, I'll bring a lot of money for you!' He put it (the scrip certificate) in his pocket and he got out of there. So this young fellow started running and yelling to his dad. The old man came across the river with the saddle horse. 'They took my grandmother's scrip,' the young one said. The boat was there beside the river and there was a bridge, so they raced up there. Just as they came to the boat, the boat started. He told the other guys: 'Let's go up to Willow Point. That's where they're supposed to stop.' Both of them went up there. The boat was coming and both of them were standing there and that pilot (of the boat), by God he saw them standing there waiting. So he never stopped; he went right through. So they sold that scrip . . . and they never brought the money.[68]

THE 1899 COMMISSIONS AT LESSER SLAVE LAKE

Knowing what had happened in previous years when scrip was issued, in 1899 Minister of the Interior Sifton arranged to have the form of money scrip changed, in a futile attempt to protect the Half-breeds from the speculators. Rather than it being made payable to the bearer on demand, which would make the work of the speculators very easy, he provided for it to be non-transferrable and non-negotiable except by a proper legal assignment. The Half-breeds, however, would have no part in this plan. This made it necessary for the Treaty and Half-breed Commissions to hold a joint meeting at Lesser Slave Lake and change the form of the scrip so that the work of the Commissions could proceed.[69]

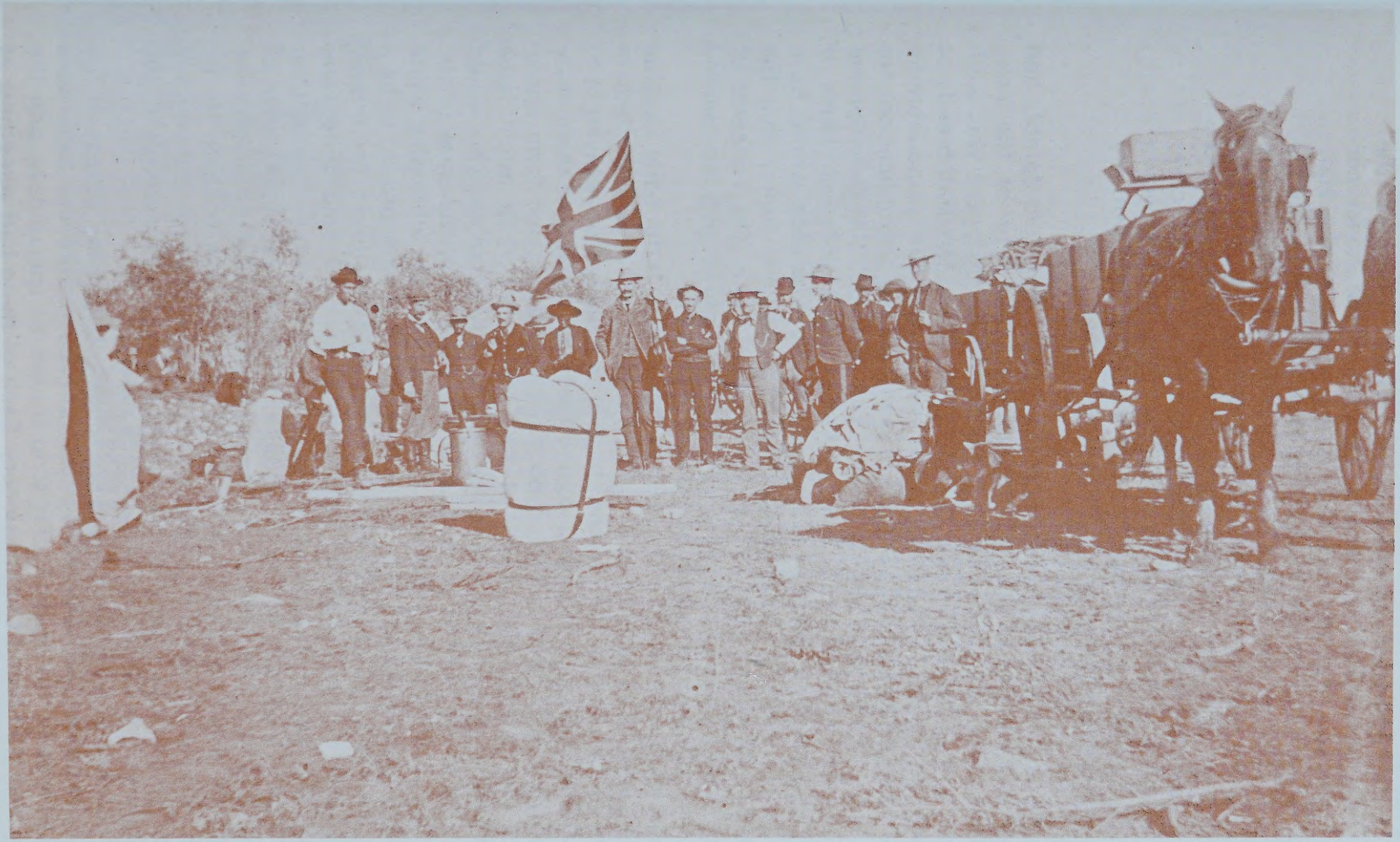

Fig 4.10 Scrip and Treaty Commission leaving Lesser Slave Lake, 1899. R.C.M.P. Museum, Regina

> The strongest consideration . . . which prompted the Commissioners in changing the form of the money certificates was the fact that if the wishes of the Half-breeds in this relation had not been complied with, the success of the Indian Treaty Commission in coming to terms with the Indian bands of the north would have been seriously compromised, as the dissatisfaction of the Half-breeds, who are in a great number of cases allied and in immediate touch with the Indians, would at once have spread amongst the latter and possibly prevented them from coming into treaty.[70]

The influence of the Half-breeds on the Indians was considerable and in many cases was based on familial ties. The fear of the commissioners that the treaty negotiations would be disrupted was well-based. If the Commission did not meet the terms the Half-breeds at Lesser Slave Lake were demanding, the treaty negotiations undoubtedly would have broken down. This would have had major implications for the governments' development policy. The plans for the development of the West included the settling of Indian and Half-breed claims. If these settlements were not secured, westward expansion would have been jeopardized. It was in the interests of national policy that the Half-breed demands were met at Lesser Slave Lake. The concerns of the Half-breeds were incidental to the over-all plan and represented only a temporary obstruction in the course of events.

Included in the Half-breed demands for money scrip made payable to the bearer was one for the right of parents to realize immediate returns on the scrip of their minor children by selling it or applying it to land as they chose. The parents argued that this would give them more immediate capital with which to purchase provisions and farm equipment. Also, the buying power of their children's scrip might have decreased over time and would be of little use to those who would have to wait eighteen years to realize the value of it. Because of the ease with which money scrip was disposed of and the increasing value of land at the turn of the century, land scrip would have proved to be a more lucrative choice. An overwhelming majority opted for money scrip, however, and only forty-eight certificates for land scrip were issued. The figures support our contention that people made their choice out of ignorance and an unfamiliarity with the significance of the proceedings. Pressured by the scrip buyers who indicated that very low prices would be paid unless the scrip was made payable to the bearer, the Half-breeds forced the commissioners to revise the wording on the certificates. Considerable influence had been exerted by the scrip buyers in order to negotiate such a move.

A number of interest groups were represented at the sittings of the joint Commissions of 1899. As we have already mentioned, there were the Half-breeds, the Indians, the scrip buyers or speculators, and the Treaty and Half-breed Commissioners. Each of these had something at

Fig 4.11 Scrip Commission boat at Pelican Rapids, Athabasca River, 1899. R.C.M.P. Museum, Regina

stake in the general proceedings of the commissions. The commissioners had a job to do in a relatively short time. The North-West was facing rapid development and the value of lands was escalating. The Klondike gold rush demonstrated that mineral wealth could be found. The railroads needed land to build their branch lines, which in turn would encourage more settlement. Business would soon be booming, provided of course that the way was paved by the Treaty and Half-breed Commissions.

The Half-breeds were involved in a complex interplay. They knew that the Indian treaty had to be signed before their commission would begin work. David Laird, in addressing those gathered at the Lesser Slave Lake hearings, stated this quite plainly:

> Commissioners Walker and Coté are here for the Half-breeds, who later on, if treaty is made with you, will take down the names of Half-breeds and their children, and find out if they are entitled to scrip. . . . If there is no treaty made, scrip cannot be given. After the treaty is signed, the Commissioners will take up Half-breed claims.[71]

Aware of this, the Half-breeds made their demands regarding the form of the money scrip certificates. These demands were met for fear that the Half-breeds would prejudice the Indians against signing the treaty if the Half-breeds were not satisfied. The clergy got involved with this issue also and letters were submitted in support of the change back to the old form of money scrip by Father Lacombe, who was an advisor to the Treaty Commission, and by the Reverend Messrs. George Holmes, W. G. White, H. Robinson and C. D. White representing the Anglicans.[72] The clergy was eager for the treaty to be signed as they stood to benefit from monies which would be provided for Treaty Indian pupils in their schools and for assistance for the destitute Indians in their congregations who were presenting a considerable financial burden. Therefore the clergy too saw the importance of appeasing the Half-breeds in an effort to speed up the work of the commissions.

In the midst of all these pressures, the Half-breeds at Lesser Slave Lake received their scrip certificates, totalling over half of all those issued in the Athabasca district. The benefits which accrued to the Half-breeds were predictably very few. The speculators bought up a large portion of the scrip for ridiculously low prices. The very first scrip certificate issued was sold to the private bankers Alloway and Champion from Winnipeg for only $75.[73] In return they received a money scrip with a value of $240. It was not unusual for scrips to sell for as little as $50 at this time. Unlike the Half-breeds, such buyers had the ability to follow through with all of the steps and paperwork involved in the eventual location of a scrip and it was to them that the profits went. The unsuspecting Half-breed took his cash and joined the ranks of the other landless poor. In addition to losing their scrip in this man-

Fig. 4.12 Hon. David Laird explaining terms of Treaty 8 at Fort Vermilion, 1899. R.C.M.P. Museum, Regina

ner, the Half-breeds were swindled further by initially being paid only a part of their fee for the rights to the scrip. The speculators would agree to pay the balance when the land was actually located, however, it was often less costly for the speculator to locate the land fraudulently by employing an imposter than to bring the Half-breed himself into the Dominion Lands office. In this way, only a portion of the promised fee would be received by the Half-breed.

It wasn't long before the scrip disappeared and the Half-breeds of the Lesser Slave Lake area realized that the scrip programme had failed them. In 1911 they submitted a petition to Frank Oliver, Minister of the Interior, requesting that a Royal Commission be appointed to investigate "the frauds, schemes, false representations, deceit, perjury and forgery in connection with the issue and application of Half-breed scrips in the Northern portion of the Province of Alberta. . . ."[74] In response they received a letter from the Deputy Minister of the Department of the Interior stating that they would have to submit documented statements about specific cases of fraud or misrepresentation as the Department was officially unaware of the existence of any such cases.[75] The responsibility for proving fraud and other misrepresentations was placed on the Half-breeds themselves, most of whom were not in a position financially or otherwise to pursue the issue. Had a Royal Commission been established the burden of the costs would have been borne by the government.

Scrip Speculators: Specific Cases

The scrip speculators we have been referring to came from various walks of life and represented numerous business and political concerns. These include both chartered and private banks such as the Imperial Bank of Canada, the Canadian Imperial Bank of Commerce, the Bank of Montreal, the Bank of Nova Scotia; and the private bankers, Alloway and Champion, of Winnipeg; business and legal firms such as McDougall and Secord of Edmonton; politicians and government officials; land companies and large numbers of private businessmen and merchants.[76] We will mention two of these who had a direct involvement with the Half-breeds of the Athabasca district, Richard Secord and R. C. MacDonald.

In November 1920 a petition was submitted to Prime Minister Meighen by Phillip Atkinson and Alexa Lafferty on behalf of Half-breeds from Fort Resolution, Fort Smith and Fort Chipewyan. They were assisted in their efforts by Mr. J. C. Calhoun of Edmonton who introduced them to the Prime Minister. Their petition was concerned with grievances about the issue of scrip in the Athabasca district and it requested the establishment of a Royal Commission to investigate alleged cases of scrip fraud.[77] Meighen indicated that he would consider their petition upon his return to Ottawa. He responded by letter on 17 December 1920, stating that:

> The scrip certificates issued in satisfaction of half-breed claims and the scrip notes issued by the Department

Fig. 4.13 Treaty 8 Commissioners, 1899. L—R: Harrison Young, secretary; Hon. David Laird, commissioner; and Pierre d'Eschambault, interpreter. R.C.M.P. Museum, Regina

> were delivered to the grantees personally and it is not considered that the Department can be held responsible for subsequent action taken in connection with the location of the scrip, and if there were any fraud perpetrated in connection therewith it was open to them to take the ordinary proceedings before the proper Court.[78]

This statement prompted John Graham of Wabasca to initiate proceedings before Lieutenant-Colonel G. B. McLeod, Alberta Police Magistrate, which charged Richard Secord with forgery of documents in the location of land procured with Half-breed scrip. Thus began the famous Secord case. Graham, himself a Half-breed and a veteran, asserted that:

> . . . the accused had bribed a half-breed woman with $10.00 and a gray shawl to go with him to the Dominion Lands Office and there present herself to be the holder of the particular scrip certificate in question and to make her mark on behalf of the person named in the script, who was then living at Fort Rae.[79]

The individual whose scrip notes were brought into question in the Secord case was Elizabeth Hyslop, née Houle, who was entitled to two notes, totalling 240 acres of land. She received these at Fort Resolution on 19 July 1901.

These scrip notes were supposedly located at the Dominion Lands Office in Edmonton on 7 May 1903 by Elizabeth Hyslop who made her mark (as she had done previously on her scrip application and the receipt for her scrip notes). This was witnessed by Richard Secord of the firm McDougall and Secord. Nine days later the two parcels of land located by Hyslop were assigned to John McDougall and Richard Secord by her (giving her mark). This was witnessed by another John McDougall of Edmonton, who on 19 May 1903 made the affadavit of execution; on June 17th of the same year, the patents for these lands were issued to McDougall and Secord.

In March 1921 the Dominion Lands Agent at Edmonton appeared before Police Magistrate McLeod to produce the papers associated with this case. They were submitted for inspection by the Court. There was sufficient evidence to warrant Secord being remanded for trial by a higher Court in April 1921. He was then freed on $5,000 bail.

The case was later dropped on the basis of an amendment to the Criminal Code (sec. 1140) which was passed in June 1921. This amendment provided that "prosecution shall not be taken after three years from offence in connection with any offence relating to or arising out of the location of land which was paid for in whole or in part by scrip or was granted upon certificate issued to half-breeds in connection with the extinguishment of Indian title."[80]

Fig. 4.14 Treaty 8 party poling boats up Lesser Slave River, c. 1903-06. Glenbow-Alberta Institute

The bill to amend the Criminal Code was introduced into the House of Commons and the Senate in 1921. C. J. Doherty, Minister of Justice, introduced Bill 138 in the House on 6 May 1921. At this time it contained no reference to the location of scrip. After the third reading on 25 May 1921 it was passed in the House. James Lougheed, Minister of the Interior, introduced the bill in the Senate on 21 May 1921. On the first of June it was passed and included an amendment referring to scrip. The amendments were then accepted in the House on the second of June and assented to on the fourth.

Pursuant to this amendment, D. M. Kennedy (M.P., West Edmonton) put forth Bill 54 on 16 March 1922 to amend the Criminal Code in order to repeal the amendment which was passed in 1921. After three readings in the House this bill was passed on 19 June 1922 only to be rejected by the Senate four days later. Kennedy again put forth a bill to amend the Criminal Code in order to remove the 1921 amendment in 1923 but after the first reading, the bill was not discussed.[81]

Only fifty days after Secord was first charged in the Alberta Magistrate's Court, the amendment to the Criminal Code was passed and became law. Secord's case, which dealt with charges going back twenty years, was dropped, demonstrating the fact that the courts were willing to apply the amendment to the Criminal Code retroactively in this particular case. There is some question about who was actually responsible for having the case against Secord dropped. On 22 November 1921 *The Morning Albertan* reported that J. R. Boyle, Attorney-General for the Province of Alberta, issued instructions to this effect. The paper of the following day carried an article which stated that Boyle was interviewed and denied ever cancelling the charges. His successor, J. E. Brownlee, claimed that the case had been disposed of prior to his taking office. Neither of these individuals took responsibility for any knowledge regarding the disposal of the case, although it had indeed been dropped.[82]

There was a public outcry against the new amendment to the Criminal Code and its application to the Secord case. J. C. Calhoun, who had been instrumental in the submission of the 1920 petition to the Prime Minister, wrote letters to the United Farmers of Alberta, the Great War Veterans Association, the Labour Congress, the Canadian Bar Association and numerous other groups throughout the country in order to rally their support.[83] The United Farmers of Alberta proceeded to send letters to the Attorney General of Alberta and the federal Minister of Justice.[84] The newspapers also picked up the issue and numerous articles appeared in *The Morning Albertan* and others throughout the province, as well as in the East. These efforts failed to have any effect on the case which, as far as the government was concerned, was a dead issue.

A prominent Edmonton millionaire had been freed and a travesty of justice had occurred. The Criminal Code amendment was applied retroactively for Secord and the offence for which he had been charged was no longer an offence. Attempts to expose the activities of other

unscrupulous speculators in the early 1900's were effectively blocked. Calhoun wrote of the case: "It is without precedent in the history of Canada, and certainly cannot be reconciled with our ideas of British Justice."[85]

Another case of speculation which had earlier affected Half-breeds from the Treaty 8 area was that of R. C. MacDonald of Winnipeg. In June 1905 a Commissioner (Country Court Judge Robert Myers of Killarney, Manitoba) was appointed to investigate the case of R. C. MacDonald, who had obtained scrip from Canadian Half-breeds from the North-West Territories who were living in North Dakota. Petitions were sent by the Half-breeds which detailed MacDonald's activities, charging him with fraud and misrepresentation. Interpreters were engaged by MacDonald to secure the signatures, or marks, on papers the Half-breeds believed to be applications for their scrip, but which were actually powers of attorney. MacDonald had led them to believe that he was an official of the Department of the Interior. In fact, he was a scrip dealer.[86]

Commissioner Myers submitted his reports on the MacDonald case in August and October 1905. McDonald was cleared of the charges against him,[87] although it was found that his agents had purchased scrip entitlements as far as three years in advance of the scrip issue.[88]

It appears from these cases that the government was willing to comply with the speculators at the expense of the Half-breeds and our system of justice. After the Secord case, no recourse was left for cases of scrip fraud. In the MacDonald case, the government was aware of the techniques used to procure the scrip entitlements and yet exonerated MacDonald from the charges brought against him. There was little interest in righting the wrongs that had been committed. Instead, the activities of the scrip dealers were condoned. The government preferred to close the books on the scrip cases and the Half-breeds have yet to receive a fair judgment.

Footnotes: Part 1

1. Memorandum from N. O. Coté to W. W. Cory, Deputy Minister of the Interior re: Legislation, Orders-in-Council, Regulations and Rulings respecting issue and location of Half-breed Land Scrip. Dec. 7, 1923. PAC, RG 15, Vol. 2113.
2. Report of A. M. Burgess, the Deputy of the Minister of the Interior. *In* Annual Report of the Department of the Interior for the year 1885. Sessional Papers, 1886, Volume XIX, No. 6 (paper No. 8). p. xxxiii.
3. N. O. Coté 1929. Grants to the Half-breeds of the Province of Manitoba and the North-West Territories, comprising the Provinces of Saskatchewan and Alberta in Extinguishment of the Indian Title. Department of the Interior, PAC RG 15 Vol. 227.
4. Manitoba Act S.C. 1870, c. 3 Sec. 31. (See Appendix 1)
5. 37 Vict. Ch. 20.
6. 36 Vict. Ch. 38.

7. Memo. March 17, 1876 from Minister of Interior attached to Order-in-Council March 22, 1876. P.C. 238.
8. 42 Vict. (1879) Chap. 31 s. 125 (e)
9. Quain, Redmond, J. H. Quain, and R. Quain Jr., 1956. Manual of departments and agencies of the government of Canada. Toronto: Butterworth & Co. p. 7.
10. Coté, N. O., 1929, *op. cit.*
11. *Ibid.*
12. P.C. No. 406, April 2, 1875.
13. P.C. No. 688, March 30, 1885.
14. P.C. No. 918, May 6, 1899.
15. See for example, memo from N. O. Coté to Clifford Sifton, March 1, 1905, regarding a letter from a Mr. B. E. Chaffery, quoting a court decision that the department's refusal to recognize assignments was contrary to the law of the land; Chaffery threatens legal action. RG 15 Vol. 950 File 966195 PAC.
16. Deputy Minister of Justice Burbidge to Deputy Minister of Interior 5 May, 1885. "With reference to your letter of the 30th ulto submitting for my opinion the question of whether scrip to be issued under The Order-in-Council of the 30th March last to the representatives of Half-breed heads of families should be treated as real or personal property. I have the honor to state that, I agree with Mr. Street's view that such scrip is personal estate and devolved accordingly . . ." RG 13, Vol. 617, pg. 867/85 PAC.
17. Deputy Minister of Justice to Secretary, Department of Interior 6 June 1885. "Referring to your letter of the 11th ulto. respecting the certificate to be issued to the children of Half-breeds under clause 3 of the O.C. of the 18th April entitling them to select 240 acres from any Dominion lands open for homestead and pre-emption entry. I have the honor to state that I agree with you that such certificates must be treated as real estate." RG 13, Vol. 618, pg. 199/85. PAC.
18. See above, notes 5 and 7.
19. This ruling was confirmed on at least seven separate occasions between 7 June 1876 and 1 June 1980 (See PAC, RG 13 A3, Vol. 522, p. 883-886; Vol. 578, p. 574-577; Vol. 589, p. 436; Vol. 585, p. 967-8; Vol. 588, p. 114-120; Vol. 596, p. 526; Vol. 598, p. 662) Quoted in D. N. Sprague, 1980. Final Report of Manitoba Metis Land Commission, 1979-80. p. 107.
20. P.C. No. 438, March 2, 1900.
21. P. G. Keyes, Secretary, Department of the Interior to E. L. Newcombe, Deputy Minister of Justice. May 16, 1900. RG 15. Vol. 783, 784. File 556321. PAC.
22. E. L. Newcombe to P. G. Keyes. May 22, 1900. RG 15, Vol. 783, 784. File 556321. PAC.
23. Memorandum from Minister of Interior, March 17, 1876. Approved by Order-in-Council March 23, 1876. P.C. 238.
24. *Ibid.*
25. Order-in-Council (P.C. 3058) Dec. 4, 1893.
26. P.C. No. 438, March 2, 1900.
27. P.C. No. 596, March 13, 1900.
28. Annex to P.C. 1182, 6 June 1901.
29. See above ,at note 5.
30. See above, at note 26.
31. See above, at note 27.
32. See above, at note 28.

33. RG 15. Vol. 818. File 606799. No. 235. PAC.
34. Memo from J. A. McKenna to Minister of Interior, December 26, 1900. RG 15, Vol. 818. File 606799. No. 235. PAC.
35. P. G. Keyes to J. H. Haslam, March 19, 1903. RG 15, Vol. 818, File 606799, No. 235. PAC.
36. Howell, Amthers and Howell to P. G. Keyes, April 20, 1903. RG 15, Vol. 818, File 606799, No. 235. PAC.
37. See note 35.
38. J. H. Haslam to Secretary, Department of the Interior, May 9, 1903. RG 15, Vol. 818, File 606799. No. 235. PAC. See also note 35.
39. Memorandum No. 766784, from Rothwell, Secretary of Department of the Interior to N. O. Coté. May 4, 1903. RG 15, Vol. 818, File 606799, No. 235. PAC.
40. RG 15, Volume 1957, File 696, (1911). PAC.
41. RG 15, Volume 1081, ruling 791, 1910. PAC.
42. Memo, R. G. Rimmer, Law Clerk, to Newcombe, Deputy Minister of Justice. June 13, 1899. RG 10. Vol. 3996. File 206070-1. PAC.
43. Sec. 1 of Cap. 22. 51 Vict.
44. J. D. McLean to Accountant, Department of Indian Affairs December 13, 1901 RG 10 Vol. 3996, File 206070-1. PAC.
45. J. A. Smart, Deputy Superintendent General of Indian Affairs to J. A. J. McKenna, Half-breed Commissioner, Dec. 21. 1901. RG 10 Vol. 3996. File 206070-1. PAC.
46. Memo to W. W. Cory, Deputy Minister of the Interior, November 26, 1920. RG 15, Vol. 983. PAC.
47. J. Chretien, Minister of Justice and Attorney General of Canada to Sam Sinclair, President, Metis Association of Alberta. April 24, 1981. On file, Metis Association of Alberta.
48. N. O. Cote, 1929. *op. cit.*
49. Goulet, R. and N. O. Côte. Report submitted to the Deputy of the Minister of the Interior, 10 January, 1888. Canada Sessional Papers, 51 Victoria, No. 14.
50. See above, at notes 5, 6 and 7.
51. House of Commons Debates May 14, 1873.
52. D. N. Sprague, 1980. The Manitoba Land Question, 1870-1882. Mimeo, University of Manitoba.
53. Manitoba Law Reports 1905. Vol. 15, pp. 322-326.
54. *Ibid.*
55. *Patterson vs. Lane.* Territories Law Reports, 1904. Vol. VI, pp. 92-95.
56. *Ibid.*
57. RG 13 A3, Vol. 577, p. 883-886. PAC. Ministerial Ruling. In this case, a Mrs. McGuinnis sold a military bounty warrant that had belonged to her husband, who had died without a will. The Justice Department refused to grant a patent to the land, since "Mrs. McGuinnis as administratrix cannot be regarded as passing any right to the land and that the patent can only be issued to the person or persons who by the law of Manitoba would inherit the land." Quoted in D. N. Sprague, *op. cit.*, Final Report 1979-80.
58. Statutes of Manitoba Cap. 30; 38 Vic. Sec. 1 (1885).
59. AMNSIS. 1980. Speculation in Half-breed land and scrip. *In* Third Progress Report, 1979-80. Aboriginal and Land Claims Department. Regina: Association of Metis and Non-Status Indians of Saskatchewan.
60. Report of N. O. Coté and S. McLeod. March 20, 1901. Submitted by Minister of Interior to Privy Council. PC 830 (1901) Dormant. RG 2, Series 3, Vol. 142.

61. *Ibid.*
62. *Ibid.*
63. J. A. McKenna to the Minister of the Interior, June 14, 1901. RG 2, Series 3, Vol. 142, file 639602 PAC.
64. See above, note 60.
65. AMNSIS, 1989, *op. cit.*
66. Archibald to Macdonald. Dec. 27, 1870.
67. *Ibid.*
68. Martin, Chester, 1973. "Dominion Lands" Policy (L. H. Thomas, ed.) Toronto: McClelland and Stewart. pp. 10-12. Originally published 1938.
69. Sanders, Gilda. The Expropriation of Indian Lands and the Creation of a Non-Status Indian Population. *In* The Metis and the Land: Land Claims Research Project 1979-80. Edmonton: Metis Association of Alberta.
70. Letter from D. H. MacDowall, MP, to Prime Minister J. J. C. Abbot. PC 1070 (1892) Dormant. RG 2, Series 3, Vol. 92. PAC.
71. Petition from John Munro and others, dated Blackfoot Crossing, 19th September, 1877. Sessional Papers (No. 45) 1886, 49 Vic. p 4-5.
72. MacDowall, D. H. to J. J. C. Abbot. *op. cit.*
73. Munro, J. 1877. petition, *op. cit.*
74. Stanley, G. F., 1961. The Birth of Western Canada. Toronto: University of Toronto. Originally published 1936.
75. Munro, J. 1877 petition, *op. cit.*
76. For an example of Metis settlement patterns, see Baldwin, Stuart, 1980, Wintering Villages of the Metis Hivernants: Documentary and Archaeological Evidence. *In* The Metis and the Land in Alberta: Land Claims Research Project 1979-80. Edmonton: Metis Association of Alberta.
77. D. N. Sprague, 1980, Final Report 1979-80. *op. cit.* p. 57.
78. Chester Martin, 1973. *op. cit.* pp. 154-155.
79. Hughes speaks of a "white settler mentality" which looked down on non-agricultural indigenous people as inferior. Hughes, Stewart 1976. The Frog Lake "Massacre": Personal Perspectives on Ethnic Conflict. Toronto: McClelland and Stewart. pp. XX-XXI.
80. Sessional Papers (No. 45) 49 Vic. A. 1886. Petition from Half-breeds living in vicinity of Cypress Hills, Received through the North-West Council, not dated; covering letter from the Liut. Governor of the North-West Territories, Dated 30th Sept. 1878.
81. P. G. Keyes, Secretary, Department of the Interior, to Corporal Connor, NWMP, Dawson, April 24, 1901. RG 15, Vol. 883, File 627588 PAC.
82. Ferguson, Theresa, 1980. Metis, Land and Scrip in Southwestern Alberta. *In* The Metis and the Land in Alberta: Land Claims Research Project 1979-80. Edmonton: Metis Association of Alberta.
83. *Op. cit. Patterson vs. Lane*
84. AMNSIS, 1980. The Nature of Aboriginal title: is it transferable or assignable? *In* Final Report: A summary and review of research findings regarding the rights and claims of the Non-Status Indian Peoples of Saskatchewan. Appendix "A". Regina: Association of Metis and Non-Status Indians of Saskatchewan.
85. *Op. cit. Patterson vs. Lane*
86. See for example Stanley, *op. cit.*, p. 8.
87. Stanley, *op. cit.*, p. 378.

Footnotes: Part 2

1. Order-in-Council, P.C. 406, 26 April 1875; Order-in-Council 5 May 1875, appointment of Commissioners to conduct the investigation.
2. Order-in-Council, P.C. 688, dated 30 March 1885, setting up the Street Commission.
3. Coté to W. W. Cory, Deputy Minister of the Interior, 7 Dec. 1923. Extract from N. O. Coté's File re: Location of Half-breed Scrip and Amendment to the Criminal Code. RG 15, v. 2113, PAC.
4. Brown, George and Ron Maguire, 1979. Indian Treaties in Historical Perspective. Report prepared for the Research Branch, Department of Indian and Northern Affairs, Ottawa. Mimeo. p. 41.
5. Coté, N. O., 1929. Grants to Half-breeds of the Province of Manitoba and the North-West Territories, Comprising the Provinces of Saskatchewan and Alberta in Extinguishment of the Indian Title 1870-1925. Department of the Interior. RG 15, v. 277, PAC.
6. Cited in Coté, *ibid.*
7. Order-in-Council, P.C. 688, 30 March 1885.
8. *Ibid.* See Appendix 3.
9. Report submitted by Street, Goulet and Forget to Minister of the Interior, 26 September 1885. The Street Commission visited Fort Qu'Appelle, Touchwood Hills, Qu'Appelle Valley, Regina, Maple Creek, Calgary, Fort Macleod, Pincher Creek, Edmonton, St. Albert, Fort Saskatchewan, Victoria, Fort Pitt, Battleford, Prince Albert, Batoche, Duck Lake, The Forks of the Saskatchewan River, Fort a la Corne, Cumberland House, Moose Jaw and Willow Bunch in the North-West Territories; Grande Rapids in Keewatin, and Winnipeg and Griswold in Manitoba. They dealt with 1694 claims from 1815 Half-breeds or their representatives. They issued 1710 certificates for money scrip and 232 for land scrip. Owing to the fact that many people were unable to present their claims, the commissioners recommended a follow-up be done the next spring to allow these claims to be heard.
10. Order-in-Council, P.C. 309, 1 March 1886.
11. Goulet, R. Report Respecting Claims by Half-breeds. Canada, Sessional Papers (No. 7), 50 Victoria, 1887. Sittings were held at Swift Current, Maple Creek, Calgary, Red Deer Crossing, Battle River (Laboucane Settlement), Peace Hills, Edmonton, St. Albert, Victoria, Lac La Biche, Fort Pitt, Battleford, Prince Albert, St. Laurent, Fort Qu'Appelle and Fort Ellice. In total, 1,883 money scrips and 11 land scrips were issued, representing 1,165 claims.
12. *Ibid.*
13. Order-in-Council, P.C. 898, 9 May 1887.
14. *Ibid.*
15. Canada, Sessional Papers (No. 14), 51 Victoria, 1888.
16. Goulet, R. and N. O. Coté. Report submitted to the Deputy Minister of the Interior, 10 January 1888. *Ibid.* The commission held sittings at Prince Albert, Fort Qu'Appelle and St. Laurent; Fort à la Corne, Cumberland House, Birch River Portage, the Pas, Moose Lake and Grand Rapids on the North Saskatchewan River; Norway House on the Nelson River; and Poplar River, Berens River, Fisher River and Fort Alexander on Lake Winnipeg; Winnipeg, Selkirk, St. Laurent, Batoche, Duck Lake, Green Lake (Sask.) and Fort Pelly.
17. Order-in-Council, P.C. 2675, 14 December 1888. Goulet was re-appointed as commissioner.

18. Report of the Commissioner, cited in Coté, N. O., 1929. *op. cit.*
19. Orders-in-Council, P.C. 592, 18 March 1889; P.C. 1394. 14 June 1889; P.C. 2408, 14 October 1889; and P.C. 2905, 28 December 1889.
20. Order-in-Council, P.C. 630, 12 March 1892.
21. Petition from Half-breeds in the Saskatchewan District to the Governor-General in Council, from Emmanual Champagne, President; C. E. Boucher, MLA from Batoche; Frederic St. Germein, Isidore Gariepy, Joachim Paranteau, and 163 others. RG 15, V. 192, File 138650. PAC.
22. *Ibid.*
23. Order-in-Council, P.C. 918, 6 May 1899. Coté, N. O. 1929, *op. cit. The Dominion Lands Act*, s.90 para. (f) was changed to allow for this. Four commissioners were appointed by Order-in-Council, P.C. 438, 2 March 1900 to hold sittings for these claims and to issue scrip certificates for $240 or 240 acres of land. The commission sat at numerous locations in the organized districts (Assiniboia, Alberta, Saskatchewan) and the portion of Manitoba outside of the original provincial boundaries. Not all claims could be heard in one season and it was recommended that sittings be held the following summer. It was also provided that whites in possession of land at the time of the treaty signing be given a free grant of land and that the Dominion Lands Act be amended to this effect.
24. e.g., submissions made by NWT Council on 15 November 1887, 10 December 1888, 11 November 1889, and 31 August 1894; NWT Legislative Assembly on 13 December 1897; and J. Sanderson from Medicine Hat on 25 December 1897. RG 15, V. 192, File 138650. PAC.
25. *Ibid.*
26. Coté, N. O., 1929, *op. cit.*
27. Walker and Coté to Sifton, 30 September 1899. RG 15 v. 771, File 518158. PAC. Sittings were held at Lesser Slave Lake, Peace River Crossing, Fort Dunvegan, Wolverine Point, Fort Vermilion, Fort Chipewyan, Smith's Landing, Fort MacMurray, Lake Wabasca, Pelican Portage, Grand Rapids, Calling River Portage and Athabasca Landing.
28. Order-in-Council, P.C. 438, 2 March 1900.
29. *Ibid.*
30. *Ibid.*
31. J. A. Coté resigned later in the month and was replaced by N. O. Coté. Order-in-Council, 21 March 1900.
32. McKenna, J. A. and James Walker. Report submitted to Clifford Sifton, Minister of the Interior (Order-in-Council 11 March 1901) on the claims heard in Assiniboia, Alberta and Athabasca. The Commission sat at the following locations: Willow Bunch, Fort Qu'Appelle (twice), Touchwood Hills, Swift Current, Maple Creek, and Medicine Hat in Assiniboia; and in Alberta at Lethbridge, Macleod, Pincher Creek, Calgary, Edmonton (three times) Victoria, Saddle Lake, St. Paul des Metis, Lac La Biche, Athabasca Landing, St. Albert, Lac Ste. Anne, Fort Saskatchewan, Wetaskiwin, Duhamel and Lacombe.
33. Order-in-Council, P.C. 460, 2 March 1900. Macrae was an Inspector for the Indian Affairs Department.
34. Order-in-Council, P.C. 575, 16 March 1901.
35. *Ibid.*
36. *Ibid.*
37. Order-in-Council, P.C. 1182, 6 June 1901. Cited in Coté, N. O., 1929, *op. cit.*
38. *Ibid.*Commission hearings were held at: Birtle (Manitoba), Fort Pelly, Winnipegosis, Kinosota, Oak Point, Fort Alexander, Killarney, Oak Lake,

Moosomin, Fort Qu'Appelle, Prince Albert, Duck Lake, Battleford, Moose Jaw, Medicine Hat, Lethbridge, Macleod, Calgary, Wetaskiwin, Lacombe and Winnipeg. In all, 483 scrip certificates were issued, along with 1307 land scrip certificates.

39. Order-in-Council, P.C. 273, 25 February 1903.
40. Orders-in-Council, P.C. 1459 and 1497, 20 July 1906.
41. Coté, N. O., 1929, *op. cit.* McKenna heard claims at the following sites: Portage la Loche, La Loche Mission, La Loche River and Ile à la Crosse. 498 scrip certificates were issued; 271 money scrip and 227 for land scrip.
42. Half-breed claims were presented at Ile à la Crosse, Portage la Loche, Stanley, Lac du Brochet Post, Lac du Brochet South end, Lac La Ronge and Mistawasis.
43. Order-in-Council, P.C. 326, 15 February 1908. A total of 119 land scrip certificates and 59 money scrip certificates were issued.
44. Order-in-Council, P.C. 730, 8 April 1909.
45. Semmens was appointed by Order-in-Council, P.C. 1114, on 12 May 1908 to negotiate the adhesion to Treaty 5 in northern Manitoba and to investigate the claims made by Half-breeds in the ceded territory as of the date of the adhesion (26 June 1908). He travelled through the area from 1908-10. By Orders-in-Council of 29 May 1909 and 24 May 1911, the Minister of the Interior was authorized to issue scrip to those claimants whose cases were allowed.
46. Order-in-Council, P.C. 1172, 12 April 1921. Treaty 11 was signed at Fort Providence on 27 June 1921.
47. Orders-In-Council P.C. 471, 26 March 1924; P.C. 1100, 29 July 1925.
48. Mair, Charles, 1908. Through the MacKenzie Basin: A Narrative of the Athabasca and Peace River Treaty Expedition of 1899. Toronto: William Briggs.
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52. McKenna, J. A. and J. Walker, 11 March 1901. Report submitted to The Honourable Clifford Sifton, Minister of the Interior.
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55. Lowe, Peter, 1978. All Western Dollars. *In* Lussier, Antoine S. and D. Bruce Sealey (eds.) The Other Natives: the Metis, vol. 2. Winnipeg: Manitoba Metis Federation Press. p. 40. (Orig. in Historical and Scientific Society of Manitoba, 1945-6).
56. William Pearce to H. Smith (Commissioner of Dominion Lands, Winnipeg), 23 October 1896, RG 15, v. 192, file 138650.
57. Letter from Father A. Lacombe to Winnipeg Free Press, 1 October 1896. RG 15, v. 192, file 138650. PAC.
58. Public Notice. Department of the Interior. RG 15, v. 192, file 138650.
59. R. A. Ruttan to H. Smith, 19 October 1896. RG 15, v. 192, file 138650.

60. Fillmore, W. P., 1978. Half-breed scrip. *In* Lussier, Antoine S. and D. Bruce Sealey (eds.), The Other Natives: the Metis, vol. 2. Winnipeg: Manitoba Metis Federation Press. pp. 34-35.
61. Gregory, J. A. 1938. Excerpts from a speech of Mr. J. A. Gregory, MLA (The Battlefords) in The Debate on the Budget. Legislative Assembly of Saskatchewan, 28 February 1938. p. 7. Mimeo on file at AMNSIS office.
62. Extract from N. O. Coté's file re: Location of Halfbreed Scrip and Amenment to the Criminal Code. RG 15, v. 2113. PAC.
63. P. G. Keyes, Secretary, Department of the Interior to the Manager, Merchants Bank of Canada, Medicine Hat, Assiniboia, 28 March 1900. Cited in Native Council of Canada, 1980. A Statement of Claim Based on Aboriginal Title of Metis and Non-Status Indians. Appendix 19, p. 54.
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65. Interview with Big Joe Cardinal by Pat Sawchuk and Joe Sawchuk, High Prairie, Alberta, 10 February 1981.
66. Interview with Henry Tomkins by Pat Sawchuk and Joe Sawchuk. High Prairie, Alberta, 9 February 1981.
67. Interview with Big Joe Cardinal by Pat Sawchuk and Joe Sawchuk. High Prairie, Alberta, 9 February 1981.
68. Interview with Big Joe Cardinal, 9 February 1981, *Ibid.*
69. Report of the Half-breed Commission (Walker and Coté), 30 September 1899 from Walker and Coté to Sifton, with accompanying report on a joint meeting of the Treaty and Half-breed Commission at Lesser Slave Lake on 22 June 1899. RG 15, v. 771, file 518158.
70. Letter of 24 June 1899 from Walker and Coté to Sifton. RG 15, v. 771, file 518158.
71. Cited in Mair, Charles. *op. cit.* p. 58-59.
72. Father Lacombe to David Laird, 22 June 1899; Rev. George Holmes, W. G. White, H. Robinson and C. D. White to David Laird, 22 June 1899; RG 15. v. 771, File 518158.
73. Edmonton Bulletin, 6 July 1899.
74. Petition submitted by Half-breeds of Lesser Slave Lake to Frank Oliver, 4 July 1911. RG 15, v. 771 File 518158.
75. Deputy Minister of the Department of the Interior to Daniel Ferguson of Grouard, 10 October 1911. RG 15, v. 771, File 518158.
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77. J. C. Calhoun to H. W. Wood, President, United Farmers of Alberta, 11 November 1920. Walter Norman Smith Papers, Glenbow Archives, Mimeo.
78. *Ibid.*
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5

ST. PAUL DES METIS: THE FIRST METIS COLONY 1896 - 1909

INTRODUCTION

For fourteen years at the turn of the century, a Metis farming colony operated in the area near modern St. Paul in eastern Alberta (see frontispiece). Called St. Paul des Metis, its existence was a product of the interaction between Church, State and Metis. As had been common in the history of the western world, this interaction took the form of a mediation by the Church between the State and the natives. In an analysis of this particular example, Hatt[1] has emphasized the role played by the attitudes of *expediency* and *paternalism*, and by the structural relationships of *patronage* and *dependency*. This paper uses a slightly different model incorporating the same four concepts. Both the State and the Church regarded the Metis in a paternalistic manner; but the Church, or more accurately Father Lacombe, felt some real responsibility for the Metis, whereas the State did not. In its role as mediator, the Church both sought patronage from the State and dispensed patronage to the Metis. The State regarded this arrangement in which it was in a position of authority but had little responsibility as a very expedient means of dealing with the Metis. The Metis, then, were in a position of dependency, dependent both on the patronage of the Church and on the relationship between the State and the Church. Thus, the threads of expediency, patronage, paternalism and dependency weave throughout this interaction. They set the scene for the opening of a Colony on the rationale that to survive, the Metis needed to be protected from the competitiveness of the European colonists; and for the closing of the same Colony on the rationale that to survive, the Metis needed to be integrated with the European colonists and imbued with their competitive spirit.

BACKGROUND

The decade of the 1890's was a very important one in the history of Alberta. In many ways it was a turning point in the process of the annexation of the West which had begun in 1870 with the transfer to

Canada of Rupert's Land and the North-West Territories. It was the decade during which the goals of the federal government in annexing the West were finally being realized. Like the fur-traders before them, the federal politicians had recognized the potential of the West as a provider of natural resources and as a market for manufactured goods. The goal of the Canadianization of the West was to nurture this area as an economic hinterland to Central Canada. To achieve this economic relationship between the prairie provinces and those further east, both rapid settlement and an effective transport system were needed in the West.

But before policies to effect these aims could be implemented, it was necessary to establish a federal presence in the West and to extinguish aboriginal rights to the land. The first was accomplished in 1874 with the arrival of the North West Mounted Police in southern Alberta. The second was achieved in two ways: 1) treaties covering the central and southern portions of what is now Alberta were negotiated in the 1870's between the Crown and Indian groups. In these treaties, the Indians ceded the rights to their traditional territory in exchange for reserves and other nominal considerations. 2) The aboriginal rights of that population which was derived from the intermarriage of Europeans and natives were extinguished in the North West Territories by an 1885 issue of Half-breed Scrip for either money or land.

Once under way, the twin goals of settlement and the creation of railway systems progressed rapidly. Large land grants given to railway companies served, first, to fund the construction by sale to the settler; secondly, since ideally the lands were to extend along the railroad route, to provide a market for the services of the railway. In 1880 the transcontinental Canadian Pacific Railway was chartered and began construction; by 1883 it had reached Calgary. By the late 1880's the Department of the Interior had begun surveying in the North-West Territories so that the free homestead system, established in the *Dominion Lands Act* of 1872, could be implemented. 1890 marked the beginning of the period of intensive immigration that was to peak at the turn of the century.[2]

For the Roman Catholic Church, the decade of the 1890's was a period during which their own religious dominance in the West was being challenged. The Oblate Order had formerly been the most numerous and influential of the missionaries. Most Treaty Indians were at least nominally Catholic and the French-speaking Red River Metis were staunchly Catholic. However, the settlers who were migrating to the North-West Territories were for the most part Protestant. The correspondence of Bishop Grandin of St. Albert makes it obvious that from 1889 on, the Roman Catholics were feeling threatened by competition from the Protestants for government funds, particularly for schools.[3] To counter this threat, Grandin decided to try to augment the Roman Catholic population by immigration. Initially he selected the French Canadians as potential immigrants.[4] However, the Quebeckers didn't seem to have been affected by the "free land" fever that caused

so many from Ontario to move west. In one analysis of this phenomenon,[5] Silver points out that the French Canadians had no great faith in the economic viability of farming in the West, due perhaps to the Catholic missionaries' emphasis on the privation and sacrifice that might await them. Too, the French regarded Quebec as their homeland and emigration as exile. They appear to have been more interested in the quality of home life than in the prospects of wealth. French farmers were not willing to leave their families over the winter to work at wage labour elsewhere, a practice that was often necessary to support the early Western farm. The church-organized societies for immigration attempted to provide for the movement of French-Canadian settlers to stable communities, not unlike the ones they left in the St. Lawrence Valley. A pamphlet from one of these societies describes the ideal colonization situation:

> A son arrivée, le colon trouvera toutes choses bien chères à son coeur: le prêtre, l'église et l'école pour ses enfants.[6]

In 1890 the Roman Catholic Church in the Edmonton area was not in a position to provide these amenities in the areas newly opened up for homestead. Thus throughout the 1890's, Grandin discusses projects to encourage the immigration of less exacting Catholic colonists: Belgians and even non-French-speaking Irish Catholics and Ruthenians.[7] The problem of their waning influence and the possible remedies is a preoccupation for the Church during this period.

For the Metis, the decade of the 1890's marks the beginning of the economic slump in which most Metis are still caught today. The North West Mounted Police reports uniformly chronicle the destitution of the western Metis from the late 1880's on. In central Saskatchewan at Batoche and Battleford a major reason, at least initially, for this impoverishment was the destruction of life and personal property during the Rebellion. In a frontier society of marginal farming eked out by trapping, fishing and hunting, it is very difficult for a single person to raise a family. Widows with families certainly head the lists of those given relief in this area at this time.[8] Other families lost stock and equipment and had no means of replacing it. Claims were made to the government for losses suffered during the Rebellion by those who had not participated in the revolt. Needless to say, all Metis were suspect as rebels and even if compensation were received, it was not necessarily adequate. A. B. Perry of the Regina North West Mounted Police reported in 1887 that "many of the claims were reduced and a large number not paid at all."[9] The Metis of the Batoche area formally petitioned that the Rebellion claims be paid "d'une manière juste et équitable,"[10] but little response from the government was forthcoming.

A third vestige of the Rebellion was the discrimination against the Metis by local whites. Brady suggests that the Metis participation in the Rebellion served as an excuse for individuals who were after land

to defraud the Metis of theirs.[11] Certainly the issue of scrip following the Rebellion did not ease economic matters for the Metis and was a disaster for those Treaty Indians who took it. Scrip was easily funnelled out of the hands of the scrippees and the former Treaty Indians realized too late the full implications of enfranchisement.

The major reason for impoverishment of the Metis right across the western provinces was the loss of or inadequacy of traditional subsistence patterns. In the past for the Metis who had grouped themselves in agricultural settlements, the Hunt had been a very important source of food, and often, in fact, meant the difference between survival or starvation.[12] With the disappearance of the bison, farming was an even more precarious means of subsistence. It is all too easy now to assume that because for the past sixty years or so, the Canadian West has experienced a climatic regimen compatible with successful farming, that it has always been thus. However, ninety to a hundred years ago, the climate of the West was .5°C colder than at present. Harvests in the marginal area of central Alberta were often threatened by early frosts. In addition, parts of Alberta sustained periodic droughts in the 1880's and 1890's.[13] One result of this uncertainty was that even those Metis who did own land and equipment but had no money were often reluctant to attempt to plant a crop. They argued that if they did so, they would have to go into debt for the seed grain and thus, if the crop failed, they ran the risk of losing their land. Several claimed that this, in fact, had happened to them in Manitoba.[14]

In addition, the government was insensitive to the dependency of the Metis on "country foods." In 1890 a law was passed forbidding the hunting of ducks and partridges in the spring.[15] After the rigours of late winter, spring is a critical period for the survival of hunters and trappers. This ban eliminated these items at a season when their exploitation could be crucial or could simply provide a welcome change in diet. In 1893, the government prohibited fishing between October 5th and December 15th and restricted it at other times of the year to holders of a $2.00 license. After representations were made by the Metis of Lac Ste. Anne and Lac La Biche to whom fish was one of the most important resources, the legislation was retracted concerning licenses but autumn fishing[16] was still barred.

Perhaps the most concisely phrased of these explanations for the destitution of the Metis was that put forward in a proposal by the Committee of St. Albert Metis who had banded together to improve the economic status of the members of their community.[17] They outlined four causes of the impoverishment of St. Albert: the destruction of the previous year's crop by frost; the decrease in fur-bearing animals and the low price for furs; the nearly total failure of the fisheries; and the high price of food in the area which compelled families to kill their cattle and sell their horses and farming implements to avoid starvation. The Committee estimated that 100 men representing 800 individuals would require relief and they recommended that the government initiate a number of public works on which these men could be employed.

Five different projects involving the repair and building of roads and bridges in the St. Albert area were proposed and estimates were made of the costs of each. The government delayed two years but finally agreed to fund at least one of the projects, an effort that involved too little and came too late.

As early as 1889, the government also foresaw that one of the effects of the railroad construction would be to eliminate yet another of the Metis sources of subsistence, freighting. This became a grim reality for the Metis by 1895:

> Till a few years ago they did well, but since the Railway has been built to Saskatoon, freighting has mostly ceased, farming was found to be a failure, the hay is also decreasing every year.[18]

The attitudes of the State and the Church towards the future of the Metis were, for the most part, comfortably fatalistic. It was acknowledged that the Metis had played a critical role in the advancement of both State's and Church's affairs in the West by acting as intermediaries between them and the Indians. However, these institutions felt little real obligation to the Metis and began to distance themselves from the Metis plight, even to the point of taking an evolutionary perspective:

> . . . les Métis n'avaient qu'une mission spéciale, celle de servir de transition entre la barbarie et la civilisation.[19]

This attitude is particularly remarkable in the Oblates who had formerly had a very close relationship with the Metis. They acknowledged some ties as Grandin reminded Wilfred Laurier,[20] but felt perhaps that they themselves were struggling for their own survivial in the rapidly changing West. Sanders[21] points out that the efforts of the Oblates were turning more and more to the Treaty Indians because the Department of Indian Affairs was committed to support a religious education program on the reserves:

> Reserve schools became both a source of funds, and an important refuge for R.C. (sic) sectarian education.[22]

On the other hand, the State felt not even lingering ties to the Metis. In the eyes of the government, their obligation had been fulfilled with the issue of scrip in the 1870's and again in 1885-6-7, despite the many ways in which the scrip program from its inception had been an abrogation of their responsibilities of trusteeship. From the North West Mounted Police reports it can be seen that the condition of the Metis was a cause for concern for two reasons only: that it did not reflect well on the government to have citizens in a state of destitution;[23] and that discontent among the Half-breeds might give rise to another Rebellion.[24]

The government had no faith in any further issue of scrip as a solution to this problem,[25] but neither did they have an alternative to propose.

The attitudes of both Church and State towards the Metis condition are elucidated by the very structure of the solution they eventually chose, as Hatt[26] points out in his analysis of government policy concerning the Metis. If the Metis impoverishment had been considered to have stemmed from losses during the Rebellion, scrip fraud, the leaving of Treaty for scrip, or changes in the structure of the economy of the prairies, the government might have been forced to look to its own policies to arrive at a solution to this social problem. But a solution involving, not government policy, but religious mediation, implies that the cause of the Metis impoverishment was something amenable to correction by religious means. It is obvious from various sources that the emphasis was on Metis improvidence and their own tendency towards nomadism as a cause of their poverty.[27] Patience, tutelage and spiritual guidance were to be the tools of their reclamation.

THE FOUNDING OF ST. PAUL DES METIS

Relationships imbued with paternalism, patronage and expediency are very evident in the documentation of events leading up to the founding of St. Paul des Metis Colony. Certainly the dependent position of the Metis themselves may be construed from the lack of any evidence to show that they played any role whatsoever in the planning of the farm colony.

A paternalistic view of the Metis, albeit with excellent intentions, was an integral part of the actions of Father Albert Lacombe with whom the impetus in establishing the St. Paul des Metis farming colony originated. One of Alberta's first missionaries, Lacombe had formed very strong ties with the Metis, his first congregation in the area. He had observed their growing destitution with concern and decided that the Church should play a role in affording the Metis some protection from the growing numbers of white settlers. Traditionally Canadian natives had handled their contacts with the greater Euro-Canadian society by means of "patrons". In a situation of extensive intercultural contact, this arrangement had the advantage of sparing them the stresses of learning the many and intricate Euro-Canadian social forms. The Church had always taken the role of patron and the natives were eager to seek and maintain these ties. The Metis of the rapidly changing West of the late 1800's were no exception and looked to Lacombe and the Church for patronage.

Lacombe felt that a farming colony would be the best solution, a land reserve which could not be sold or taken away by fraud and on which the Metis could become economically self-sufficient by developing into agriculturalists. The idea of a farming colony was not at all new. According to Drouin,[28] Lacombe's thinking was influenced by similar proposals from the Cypress Hills Metis in 1874; from Archbishop

Tache in 1879; from D. H. MacDowall, a federal M.P. in Saskatchewan, in 1890; and most of all, perhaps, by the example of the Jesuit farm colonies in Paraguay, which Lacombe characterized as "un succès sous tous rapports."[29] Other descriptions however,[30] have referred to the Paraguayan Reducciones as an exercise in "theocratic despotism", the paternalistic system par excellence. Beginning in 1566, a Paraguayan tribe called the Guarani, originally subsistence horticulturalists, were alternately herded or lured into Jesuit missions. There they were used primarily as a labour force on yerba maté tea plantations, and secondarily as a military force to defend the Jesuit missions against raids by hostile Indian tribes, and on the southern border of Paraguay against Portuguese invasion. Guarani life was very strictly controlled by the Jesuits. All land, equipment and produce were the property of the community and in return for their labour, the Indians received rations of food, clothing and imported goods. The Jesuits became one of the wealthiest and most powerful forces in Paraguay. In 1867 the Jesuits were banished from the Spanish dominions.

Perhaps one of the most dangerous effects of a paternalistic policy is that it can often produce the condition that it presumes to cure. After people have been deprived of the right to make decisions concerning their own lives for a long time, they may, in fact, find it difficult to resume a role of self-determination. One observer referred to the Guarani people as an "automaton that acts as peasantry and soldiery; not a people but a flock."[31] After the banishment of the Jesuits, the Guarani found that they had been stripped of their aboriginal rights as well. Since they had been living in the missions for 200 years they had no documentation of their occupation of their traditional lands.[32]

Presumably, Lacombe, in choosing this example, was dazzled by the speed with which people involved in one subsistence system could be adapted to another and with such gratifying consequences for the standing of the religious order involved. His paternalistic attitude is revealed also through the terms he uses to address or to refer to the Metis. They are children; he is their father. That this presumed relationship implied some responsibility according to him, is underlined by the contrast of his enthusiasm with the opinions of other Oblates. Neither Grandin, the Bishop at St. Albert, nor Therien, the younger priest who aided Lacombe, expressed any optimism at the outcome of the farming colony. It is recorded that in giving permission to Lacombe to pursue his project, Grandin said:

> Allez que Dieu bénisse votre zele! Mais si c'est aujourd 'hui le Dimanche des Rameaux, ce sera bientôt le Vendredi-saint.[33]

Therien, who was to become the manager of the Colony, wrote later in his journal that before the Colony opened, he had remarked that if it failed, he would induce French Canadians to come and form Catholic parishes.[34]

The interplay of paternalism for the Metis and the seeking of patronage from the State is evident in Lacombe's dealings with the politicians. In 1895, Albert Lacombe began lobbying in the East and wrote a proposal entitled "A Philanthropic Plan to Redeem the Half-breeds of Manitoba and the North West Territories." He cited scrip dealings and loss of means of subsistence as reasons for the destitution of the Metis but, lest this should be construed as criticism, hastened to assure the government that the Half-breeds have been "well and justly treated" by the State, but that because of their "natural improvidence they have wasted what they received." The solution to this natural improvidence was to replace any further scrip issues with land reserved for the use of the Metis but administered by the Church and the State. Specifically, Lacombe proposed that a farming colony be established at Buffalo Lake, where four sections would be granted to the Episcopal Corporations of St. Boniface, St. Albert and Prince Albert for the construction of a church and school; and four townships would be leased to the Corporation at a nominal rent and subsequently allotted to destitute Half-breed families in forty-acre lots. In addition, the Government would survey the land, provide seed and agricultural implements, and organize a patrol so that neither non-Metis nor liquor-sellers would be allowed to settle in the reserved area. The Oblates would administer the colony and raise funds for an industrial school. Lacombe suggested that if any of the Metis colonists were English-speaking Protestants, they be located in one area and be responsible for building their own church and school as they desired.[35].

A. M. Burgess, at that time Deputy Minister of the Department of the Interior, was very interested in the proposal. Burgess had submitted a report in 1889 on the condition of the Metis in the North West Territories and he too had felt that scrip issue was not the answer to the problems of the Metis. A land reserve would be an inexpensive alternative. In his letter recommending the proposal to T. M. Daly, the Minister of the Interior, he stressed the attractiveness of this proposal, and makes the point that "the proposal involves no financial outlay on the part of the Government beyond the furnishing of seed grain and a few implements at the inception of the scheme, and therefore would appear to be no great risk in giving the experiment a fair trial."[36] However, Burgess did feel that a large area of reserve in the Buffalo Lake area which was being settled very rapidly would cause discontent among the incoming white settlers and would be a source of conflict between them and the Metis. A new site was selected in the eastern part of the province north of the North Saskatchewan and arrangements were made with the CPR to transfer their land grant from there to elsewhere.[37]

On December 28, 1895, an Order-in-Council was passed establishing the St. Paul des Metis colony on a 21-year-lease on Townships 57 and 58, Ranges 9 and 10 West of the Fourth Meridian. The legal charter was based on a provision written into the Dominion Lands Act that permitted the Minister of the Interior to set aside land for special purposes.[38]

Two leases were established at the same time for a rental of $1.00 per year: one of two sections for the Oblate mission and school and the second of the rest of the four townships for the Metis farm-holdings. A grant of $2,000 was allotted for the purchase of seed grain and implements. Before the Order-in-Council could take effect, a Board of Management was to be formed. Initially Lacombe suggested that Burgess be a lay member of this Board, but both Burgess and Daly felt that such an appointment would involve a conflict of interest.[39] It was decided that the Board would consist of Archbishop Langevin of St. Boniface, Bishop Grandin of St. Albert, Father Lacombe, J. A. Ouimet, an M.P., and Senator R. Dandurand. Although not a member of the Board, Father Therien was appointed as Manager and Representative of the Board on the Colony.[40]

Lacombe then printed a circular in English, French and Cree announcing the project to the Metis whom he addressed as "Dear Children and Friends." He stated that the land was loaned for as long as the Colony was serving the intended use; that the land was entirely under the direction of the Oblate missionaries to distribute at their will, even, if they would, to white colonists or Indians; that the Metis would only have the use of the land; and that an industrial school would be established to train the children in agriculture and ranching. He also warned the Metis that nothing was promised in terms of household supplies or money; that the Colony was only for the destitute Metis, not for those who had houses or land; that initially the Colony could only take a small number of families and that liquor was strictly forbidden on the Colony. However, in his conclusion, Lacombe strikes a very encouraging note in a repetition of the phrase used to entice the French Canadians to colonize:

> In a short time you will have made an establishment which will afford you an easy living and you will have the consolation to be at home, near your church, your school and your pastors.[41]

It was the personal relationship between Burgess and Lacombe which gave the St. Paul des Metis Colony its opportunity. Both spoke in very glowing terms of each other. From the documentation of the events leading up to the granting of the land, it is difficult to escape the impression that the Colony was established not so much that the Metis might achieve economic independence, but so that Lacombe might be rewarded for his past accomplishments and services. Both the State and many of the Oblates regarded the Colony as a risk but appear to have agreed to it to gratify the wish of a very distinguished person. On the one hand, it was advantageous for the Metis to benefit from the regard in which Lacombe was held; but, on the other hand, nothing serves more to underscore the irrelevancy of their condition to the whole plan and their dependency on the Church and on the relationship of the Church and the State.

THE EARLY YEARS: 1896-1904

Patronage between the State and the Church or more specifically between Burgess and Lacombe had played a very important role in the establishment of the St. Paul des Metis Colony and its influence is in no way more emphasized than by the effects of its absence. In 1897 the Conservative government went down in defeat and the Liberal party of Sir Wilfred Laurier assumed power. In the Department of the Interior, Daly and Burgess were replaced by Sifton and Smart. Unfortunately, Lacombe had opposed Laurier earlier over the Manitoba Schools Question, and whether as a result of this or not the patronage formerly extended by the Department of the Interior to the Board of Management of St. Paul des Metis was withdrawn.

One of Lacombe's major goals had been the construction of an Industrial School. A number of petitions to the Department of the Interior for funds to construct a "Manual Training School where the children could be kept as boarders and not only trained in farming, carpentry and blacksmithing but would also receive elementary instruction in the Three R's"[42] were ignored. Finally in 1898 Lacombe requested that since the Department had originally invested money in the Colony, an inspection should be made by one of their representatives. The Dominion Lands Agent from Edmonton, A. A. Ruttan, visited the Colony for a few days and returned an enthusiastic report.[43] He recommended funds for two priorities: more farming implements since there were only 8-10 ploughs and 1-2 disc harrows for the entire Colony; and a boarding school, since the parents were often away hunting in the bush to supplement the income from their farms. This report was not well received by Sifton who had already decided that no funds would be awarded for a boarding school and the report vanished into obscurity. Sifton, however, did agree to provide the settlers with oats and barley after the crop failure of 1903.[44]

Life on the Metis Colony would have been arduous enough even with a certain amount of patronage. To aid self-sufficiency family holdings were enlarged from forty to eighty acres[45] but the opening of the Colony in the month of July (1896) meant that the Metis were not able to put in a crop that year. Instead, they supported themselves through the winter mainly by fishing.[46] The next year, a small crop was produced and a sawmill and grist mill were removed from Lac La Biche and reconstructed on the Colony. Although Burgess had ensured that the Colony would receive an additional $2000 grant for seed and implements in 1897 prior to the Conservative defeat, money was still very short. Therien forced the Metis to work for the seed money which had already been granted by the government for that purpose; he asked them to rebuild the mills without remuneration but then later required 1/3 of all logs sawn at the sawmill as payment for the use of it.[47]

Although the Oblates did encourage the settlers in small economic ventures such as hog-raising, most of their real ambition seems to have been reserved for projects of an educational or religious nature rather

Fig. 5.1 The boarding school at St. Paul des Metis. Provincial Archives of Alberta

than of an economic one. In fact, although the Oblates wanted to retain their roles as administrators, teachers and religious leaders in St. Paul des Metis, they attempted to find an agricultural order of monks which would take over the farming aspects of the Colony. Lacombe approached, in turn, the Salesians of Italy, the Trappists of France, and the Premonstratensian Fathers of Belgium, but did not succeed in convincing them to come to St. Paul des Metis.[48]

Moreover, the Oblates' aspirations were completely out of step with economic reality. Although the government had refused to fund a boarding school, the Oblates used what little money was available to start construction on a large 3-storey one in 1901 (see Fig. 5.1). Drouin comments that "plus que tout, les agissements d'un ministre anglican métis, Matheson, poussent le P. Therien à fonder sans retard un grand pensiannat."[49] Large sums of money were raised by Lacombe and Therien in a tour through Quebec and the eastern United States, using the plight of the Metis and the hope offered by the Colony as the central theme. Most of this money, however, went to the diocese of St. Albert which, according to Therien, was on the verge of bankruptcy. What money did come to St. Paul was a certain amount which helped to finish the boarding school and $5,000 which was earmarked by the donor, M. Forget, for a new church[50] (see Fig. 5.2). In the light of these disbursements, the reclamation of the Metis, as Lacombe termed it can be truly seen as first a matter of the spirit and only secondly a matter of an economic base. When the crop failed a year later in 1903 at St. Paul des Metis, the donations of over $21,000 from the 1902 fund drive were not available to help the settlers. Instead, the government had to intervene with a supply of oats and barley, and later with loans towards the purchase of seed grain.

In 1904, Therien made an attempt to recreate the ties of patronage with the government, only now these would flow between Therien and Frank Oliver, a Conservative, instead of Lacombe and the Liberals. Therien refers to this quite frankly in his Mémoires de St. Paul des Métis:

> Des circonstances toutes particulières m'avaient fait prendre une part très active dans la politique en vue des avantages à obtenir pour notre colonie . . . Je m'étais acquis la sympathie d'Oliver en votant et en faisant voter mes métis en sa faveur.[51]

After Sifton resigned from the Cabinet over the Separate School controversy, Frank Oliver of Edmonton became the Minister of the Interior. Almost immediately, the benefits of patronage were evident again in the relationships between the Colony Administration and the Department of the Interior. As debts accrued for the purchase of seed grain after the crop failure, the Department picked up the bill.[52] However, this period of benefits for the Metis was not to be of long duration.

Fig 5.2 Father Therien and two Lay brothers outside the Church built in 1905. Provincial Archives of Alberta

THE CLOSURE OF THE COLONY: 1905-1909

In January of 1905, a fire destroyed the new boarding school at the Colony and killed one of the boarders. After eight years of financial struggle, this was quite a blow to the Oblates, and the more so, since the fire appeared to have been started deliberately by some of the Metis children. Although with the patronage of Oliver behind the Colony some solution might have been found, this incident appeared to justify to Therien no longer maintaining any pretense of building a future for the Metis. Instead, he pursued the idea he had entertained since the beginning of the Colony, to turn St. Paul des Metis into a French Canadian parish. Subsequent events illustrate the harsh consequences for the Metis of the loss of the patronage of the Church, consequences that were amplified by the strong relationship between Church and State that the Metis themselves had created by voting for Oliver. Therien's Mémoires de St. Paul documents with devastating frankness the change in Oblate patronage from the Metis to the French Canadians:

> Il faut croire que providence voulut la disparition de notre école et la ruine de la colonie pour y établir dans cette région de nombreuses paroisses canadiennes françaises . . . Au début nous eûmes à lutter contre deux obstacles: les métis et les colons de langue anglais.[53]

However, it was to take four more years of discrete manipulation "combatting these two obstacles" to bring about this feat.

Certainly it is obvious that from this point on, Therien's representation of the Metis to the government alters radically. In 1902 Therien had argued that the stability of the Colony and the extent to which the Metis had relied on their own resources to make the Colony a success were indications that early pessimism had not been well founded. He wrote that "whether the Half-breeds would come to stay or not, is settled once and forever."[54] After the fire, Therien refers to the lack of growth of the Colony instead of to the stability and represents the Metis not as industrious but as lazy and discontented.[55]

A second step towards Therien's goal was taken when he convinced Oliver that the area surrounding the Colony should be surveyed and opened up for homestead. Interviews with former settlers on the Colony or with their descendants reveal that Therien encouraged the Metis to take homesteads outside the Colony. According to one source, Therien assured the younger Metis that if they built up a homestead outside the Reserve, they could later sell it and use the money to improve their holdings on the Colony. It was claimed that once people began to do this, Therien used this as evidence that the Metis were no longer interested in the project and were leaving the Colony.[56]

Furthermore, Therien asked that an Oblate, A. Ouellette, should be appointed as an immigration agent to ensure a flow of French Canadian

Fig. 5.3 The Presbytery at St. Paul des Metis. Provincial Archives of Alberta

settlers into the area. Park of his argument for this arrangement lay in the number of sacrifices the Oblates had made for the Colony and their understandable desire to have some compensation for their efforts in the area.[57]

The immigration program had almost immediate consequences on the Colony itself. In 1906, Oliver was informed by a Metis settler that a French Canadian, a U. Fouquet, had fenced off two sections of Colony land.[58] Oliver made inquiries to the Oblates and was surprised to learn that Fouquet had received the permission of Lacombe to remain there. Lacombe stated that this was so because Fouquet had made considerable improvements on the land before he learned that it was within the Colony boundaries.[59] Later, the Board of Management requested that Fouquet be given entry on 160 acres including the land he had improved, arguing that he would inspire the Metis "by his example, his industry and energy."[60] If inspiration was necessary for the Metis settlers it is unfortunate that the Oblates had not admitted well-to-do Metis into the Colony from the beginning. Oliver had to refuse but softened this by saying that nothing would be done by the Department of the Interior to force Fouquet to leave.[61]

In February of 1907, another of the Metis settlers wrote to Oliver on behalf of all the settlers to inquire, first, whether the reserve was to open to homesteading and, secondly, whether the reserve had been given to the Half-breeds forever or only for a certain number of years. He explained that if the reserve were to open, those settlers who were entitled to homestead would prefer to make entry inside the reserve, rather than going outside.[62] Oliver replied that no provision had been made to change the status of the Colony and that in his opinion, there was no probability of it ever happening. He, however, did not provide the terms of the lease which made it quite clear that the length of tenure was only for 21 years with a possibility of one renewal.[63]

By 1908, quite a few French Canadian squatters had been admitted by Therien into the Colony (see Fig. 5.4) and the Metis settlers began to ask questions. Therien's tactics were to publicly deny any knowledge of the opening of the Colony and to represent the matter as one completely in the hands of the government. Privately, however, he decided to try and convince some of the wealthier Metis that opening the Colony to homesteading would be beneficial and again his methods were ones of misrepresentation:

> "Ainsi dans les conversations entre deux ou trois à la fois, nous discutions le pour et le contre. La plupart du temps je m'insurgais contre l'idée d'ouvrir la colonie, tout en finissant par énumérer les avantages qu'il y aurait, même pour le métis . . . Finalement, après avoir gagné à ma cause cinq ou six entre'autres (sic) Elzear Poitrea, François, son frère, les frères Laboucane, Elzear et St. Pierre et d'autres, je me preparais à ouvrir la colonie.[64]

Fig. 5.4 Settlement at St. Paul des Metis

In June of 1908, a memorandum was submitted to the Department of the Interior stating that the Board of Management of the St. Paul des Metis Colony wished to terminate their leases. Furthermore, they wished the four sections of land they had occupied to be assigned to them in compensation for their expenses and they expressed their intention to use the balance of the lands within the townships for *bona fide* settlers who would be prepared to take up homesteads as soon as the reservation was lifted.[65] Accompanying this memorandum was a list of the names of 143 prospective entrants, then resident in the U.S. and Quebec who had authorized Therien to apply for homestead entries on their behalf.[66] Therien also provided Oliver with a second list of 63 names of Metis who had located on the Colony with the Mission's consent.

In August of 1908, Oliver submitted a similar but more restrained memorandum to the Privy Council concerning the closure of the Colony. It was suggested that the Board of Management of St. Paul des Metis felt that the results had not justified further expenditure and that the leases be terminated. Oliver makes three recommendations that show his own acceptance of the Oblate plan: that Metis claims in the Colony be investigated; that the Oblates be granted four sections of land as compensation for the $68,000 they claimed to have invested in the project; and that the Colony land be then opened for settlement.[67] This memo was approved, but, presumably as part of the general conspiracy of silence, was not published.

That Oliver was aware of the Metis opposition to a closure of the Colony but nonetheless, contributed greatly to this conspiracy of silence is well-documented by Therien:

> Un jour que j'étais à Ottawa dans l'office du ministre de l'intérieur, Oliver, celui-ci me montra une pile de lettres reçus de St. Paul en me disant "Tous les métis ne sont pas en faveur de l'ouverture." "Je le sais, lui dis-je, mais les principaux le sont." "Ah, oui, je le sais. Vous faîtes un bon travail," me dit-il . . . Préalablement j'avais demandé à Oliver, si je pouvais laisser entrer quelques colons dans la reserve devant son ouverture. Oui, m'avait-il dit, pourvu qu'il soit entendu qu'ils ne sont là que jusqu'au printemps (de 1909) alors qu'ils prendront des terres ailleurs. Car, dit-il, il faut me mettre en état de pouvoir répondre aux métis qui vont protester contre l'admission de ces colons dans leur reserve . . . Ensuit afin de satisfaire les métis et les amenera prendre leur titre de propriété, il me faut les mettre sous l'impression que la reserve ne sera pas ouverte du moins pour longtemps, car me dit Oliver, les métis craignont d'être mis dehors de leur reserve pour être remplacés par d'autres.[68]

The investigation of the Metis claims was carried out by Samuel Maber, an official of the Department of the Interior. He presented his report to Oliver on January 22, 1909. In summary it stated that of the claims made to him, 19 Metis had no right to entry since they were non-resident; 20 Metis had already received patents for homesteads outside the Reserve; 15 were holding entries for homesteads outside the Reserve; and 28 had not exhausted their homestead rights at all.[69]

Instructions from Oliver ensued as to how the Metis claims were to be handled. Any head of family who had settled on 80 acres of the reserve with the consent of the Mission would be permitted to acquire title to the 80 acres as a free grant subject to settlement duties; if the head of the family had not exhausted their rights to homestead, they might claim 160 acres as long as the 80 acres on which they had settled were included; in the above two cases, the entry fee would be waived but the ordinary homestead duties were to be completed; Metis who had settled on School Lands would be granted a quarter-section elsewhere and the Department would take into account the duties performed upon the School Lands.[70] On March 2, 1909, the Syndicate formally surrendered the leases of the land [71] and on March 26th, Therien sent a list of the lands chosen by the Mission to S. Maber.[72] Maber returned to the Colony and settled the Metis claims according to the instructions. According to Therien, the reception of the land titles by the Metis went off very quietly and if any emotions were raised, it was over the eviction of the French Canadian squatters. Therien congratulated himself that the Metis were so moved to sympathy for the plight of these squatters who were being forced to leave their cabins on the Reserve in the middle of winter, that they did not question their own situation.[73]

The report [74] formally presented by S. Maber to F. Oliver contained 5 schedules: A, a list of 65 allowed claims; B, a list of lands granted to the Half-breed claimants; C, a list of 20 disallowed claims; D, a list of 5 Half-breeds who were granted entries on other lands in lieu of their settling on School Lands; and E, a list of the Mission Lands. Maber notes that 44 quarter-sections were taken up to extinguish the claims of the Half-breeds.

Those Metis whose claim was disallowed by reason of non-residence were, for the most part, unmarried sons of individuals who were allowed claims. As unmarried sons, although they all had broken land on their claims, they did live with their father, which was sufficient to establish non-residence. In some cases, the unsuccessful claimant was the elderly father of a settler, who lived with his son. One case is mentioned where the claim of a settler was denied although he had a house and some residence. However, he had gone away to work on the survey crew and his wife had in the meantime moved in with her mother.[75] The judgement of non-residence did not take into consideration the cultural forces that kept adult unmarried/widowed Metis individuals in an extended family residence. Alternately, if Therien and Oliver had been more open about the plans for the Colony, such claimants could have prepared in advance by finishing their houses and moving onto their claim.

After the settling of the Metis claims, the date of the opening of the Colony to homesteading was decided upon: April 10, 1909. A policy of secrecy still prevailed. Oliver warned Therien that this date must be announced in the papers and a notification placed in the post office nearest to the Colony. However, Therien convinced him to publish it only in his own newspaper, the Edmonton Bulletin, and only a couple of days before the actual opening, and to put the notice in the St. Paul post office only.[76] Therien himself notified the French-Canadian settlers of the date and warned them to be in line at the Edmonton Lands Office. Therien had already allotted to each settler a number which matched a homestead location on a list provided to one of the Oliver's employees. This employee took charge of the Land Office for that day and with the aid of others of Oliver's men, some 250 French Candian claims on the former St. Paul des Metis Colony were registered. Therien was overjoyed to have blocked any English Protestant settlers from obtaining land in the area.[77]

Of course, his tactics had also successfully blocked the Metis individuals whose claims had been disallowed from making entries as well. The Metis were now in a situation where mature sons could not get homesteads near their parents. If the sons wished to have land of their own, they had to move; and if the parents wished to remain near their sons, they had to sell their land.

Interviews with individuals whose parents or grandparents held land on the Colony outline some of the reasons why even Metis with claims left the Colony in the few years after it was opened to homesteading. There are a number of references to discrimination against the Metis by the French. The French bought up pews in the Church and the Metis had to stand in the back during the services; and the Metis children were being harassed in school. The Metis felt that the French could build themselves and their property up more easily because they had easier access to loans from banks. In addition, as the former Colony became settled, the Metis, particularly those on 80-acre grants found that there was too little land to graze their horses and cattle. By 1912, most of the Metis had left the area of the former St. Paul des Metis Reserve. Many migrated to Lesser Slave Lake, and a certain number moved to the Fishing Lake area.[78]

A postscript to the closure of the Colony was the discovery that certain people had bought up the claims of a number of Metis before they had become entitled to a patent. The Department of the Interior investigated and found that the Metis had acted in ignorance and subsequently refused to recognize any of the transactions between the Metis and the speculators. This enabled these Metis to re-enter on other homesteads.[79]

SUMMARY AND ASSESSMENT

The attitudes of expediency and paternalism on the part of the State and Church together prepared the way for the failure of the St.

Paul des Metis project. The State regarded Lacombe's proposal as a way of possibly saving money and as a way to shift the responsibility for an indigent section of the population to the Church. However, the State's lack of faith in the project is certainly demonstrated in the short-term leases granted for the Reserve and in the maintenance of the CPR and School Land rights.

Although the Oblates, at least initially, had good intentions concerning the preservation of the Metis as a group, these were hampered by, first, short-sightedness, and by, secondly, an emphasis on the spiritual rather than the economic development of the Metis. As Hatt points out, although paternalism implies responsibility, it is also short-term and arbitrary.[80] Lacombe accepted the short-term leases offered by the government and requested only $2,000 in funds from the government, even though he knew money would not be forthcoming from the diocese. Despite the lack of support, only the destitute Metis, those financially least prepared for relocation, were invited to make the trip to the Colony. Drouin suggests that Lacombe may have expected the government to withhold the 1900 scrip, as he himself had suggested, and that some of this money would have gone to the Reserve.[81] However, what money was available from fund drives was funnelled almost from the start into building projects that were not realistic, given the economic condition of the Metis settlers. The boarding school was necessary for the efficient education of the children; it was certainly desired by the settlers and was undoubtedly a source of pride to them. However, at least some of the money spent on that ambitious structure could have been better used elsewhere. Therien seems to have been more concerned about the impressiveness of the Oblate presence on the Colony rather than about the general quality of life in other respects.

While the attitudes of expediency and paternalism may have prepared the way for the failure of the Colony, the actual mechanism of its closure was through the structural relationships of patronage and dependency. Figure 5.5 outlines the succession of patronage relationships which influenced the operation of St. Paul des Metis. Most critical for the Colony was the combination of a strong Government-Oblate tie and a severed Oblate-Metis tie. The Colony had survived the loss of patronage between the Government and the Oblates in the early years; it might even have survived the loss of Oblate patronage if the Sifton-Lacombe/Therien relationship had persisted. The Oblates would never have asked to revoke their leases if they'd had no assurance of the land on which the mission stood and of a replacement congregation. However, the last combination of patronage relationships illustrated in Figure 5.5 easily defeated this project for Metis economic betterment.

With the loss of the patronage of the Oblates for the Colony as a whole, the patronage relationship was narrowed to one between Therien and any individual Metis. Here perhaps the patronage relationship was at its most explicit. Therien perceived a need to convince, not the majority of the Metis, but only the principal Metis, to agree to the lifting of the Colony boundaries. His reasoning concerning a Metis

family who claimed land in a section that the Mission wanted, more land in fact than Therien thought they deserved, was a direct consequence of this system of influence:

> That man Laframboise does not deserve any favour. He has never been with us in any political contest and why should he be rewarded for that? It would have a very bad effect on the people.[82]

A number of points illustrate the situation of dependency in which the Metis were placed:

1. At no time either in the opening or in the closure of the Colony were the Metis consulted as to their own desires.

2. The Metis were used by the Oblates to obtain money, most of which was not used in the Colony. What money was used in the Colony was spent principally on the buildings of the mission. At least some of these were constructed using free Metis labour. The Oblates, although they still possessed these buildings with the notable exception of the boarding school, then asked for land as compensation for the expenditure. Once they'd used the Metis thus to obtain land and buildings, the Oblates were in a position to attract a preferred congregation, the French Canadians.

3. The Metis voting power was used by Therien to establish a patronage relationship with Oliver. Only Therien, however, received the direct benefit of this relationship, and he used it to expel the Metis from their Colony.

4. Although one of the most common accusations used against the Metis was a lack of planning or foresight, a conspiracy of silence between Church and State prevented the Metis from making plans in their own interests. This conspiracy of silence was intended explicitly to stop the Metis from agitating against the plans to close the Colony. It also acted to prevent them from making plans concerning their options in obtaining land so that they would be in the best possible position by the time of the Maber Commission. This occurred, although the settlers particularly asked for warning of the closure of the Colony for this reason.

YEAR		RESULT
1895 - 1897	Burgess → Lacombe → Metis	Establishment of the Colony
1897 - 1904	Sifton ⇢ Lacombe/Therien → Metis	Financial struggle. Maintenance of the Colony but no real growth.
1904	Oliver → Therien → Metis	Dept. of Interior picks up seed grain debts after crop failure.
1905 - 1909	Oliver → Therien ⇢ Metis ↳ French Canadians	Closure of the Colony *qua* Colony. Settlement of Metis Land Claims. Reward of Land to Oblates; Collusion of Gov't. and Oblates in Selection of Homesteaders.

Fig. 5.5. The Flow of Patronage and Its Consequences

The status of the land granted to the Metis settlers before the closure of the Colony was never well-defined. According to Maber, these were to be considered, on the one hand, as special grants; on the other hand, homesteading duties were required before patent could be received.[83] Subsequently, the Department of the Interior never did develop a consistent position: the Metis settlers were to receive timber rights because they fulfilled homstead requirements; but it appears that the Department did not insist that all homestead requirements be met. In some cases the applicant's long residence on the Colony was sufficient to establish his status as patentee without his completing all requirements.[84]

The government had stressed their desire to treat the Metis as any other citizens lest they should become wards of the State. Nevertheless special considerations were granted, not in recognition of any aboriginal right, but in recognition of a special situation. That this special situation in which the Metis found themselves stemmed directly from

official policy towards natives was ignored. The inability of the government to consider the status of the Metis in any other terms than that of the polarity of citizen/ward was to influence their policy throughout the 1900's.

Footnotes

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"More than anything, the activities of a Metis Anglican minister, Matheson, impelled Father Therien to build a large boarding school without any delay." (Author's translation)
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51. *Ibid*: 20.
"Special circumstances had made me take a very active part in politics in view of the advantages I could obtain for our colony . . . I had won the sympathy of Oliver by voting and by having my Metis vote in his favour." (Author's translation)
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57. *Ibid*: 21.
58. Risdale, T. to F. Oliver, Oct. 31/1906. Department of Interior Files. RG 15. Vol. 708. File 360530.
59. Lacombe, A. to F. Oliver, Nov. 6/1900. *Ibid.*
60. Legal, Adelard, Albert, Vandurand and Lacombe to F. Oliver, Dec. 26/1906. *Ibid.*
61. Oliver, F. to A. Therien, April 19/1907. *Ibid.*
62. Poitras, E. to F. Oliver, Feb. 25/1907. *Ibid.*
63. Oliver, F. to E. Poitras, March 22/1907. *Ibid.*
64. Therien, A., *op. cit*: 23.
"Thus in conversations with two or three at a time, we discussed the pros and cons. Most of the time, I argued against the idea of opening the Colony, always finishing by enumerating the advantages it would have, even for the Metis. . . . Finally, after I'd won to my cause five or six, among others, Elzear Poitras, Francois, his brother, the Laboucane brothers, Elzear and St. Pierre and others, I prepared to open the colony." (Author's translation)
65. Memorandum to the Department of the Interior. June 22/1908. Department of Interior File. RG 15. Vol. 708. File 60530.
66. List of Individuals Authorizing Therien to Apply for Homestead Entry on their Behalf. Appendix to Above. *Ibid.*
67. Memorandum to the Privy Council. August 8/1908. *Ibid.*

68. Therien. A., *op. cit*: 24.
"One day when I was in Ottawa in the office of the Minister of the Interior, Oliver, himself, showed me a pile of letters received from St. Paul and said to me "All the Metis are not in favour of the opening." "I know," I told him, "but the main ones are." "Oh yes, I know. You're doing good work," he told me. . . . Previously I had asked Oliver if I could let several settlers enter the reserve before it opened. "Yes," he told me, "Provided that it's understood that they will only be there until spring (that of 1909) when they will take land elsewhere. "For," he said, "I must be able to answer the Metis who are going to protest against the admission of settlers onto their reserve." . . . Then in order to satisfy the Metis and to induce them to take their title of property, it is necessary to give them the impression that the reserve will not open at least for a long time, for, Oliver tells me, the Metis are afraid they will be forced to leave their reserve and be replaced by others."
69. Maber, S. to F. Oliver, Jan. 22/1909. Department of Interior File. RG 15. Vol. 708. File 360530.
70. Oliver, F. to S. Maber, Jan. 23/1909. *Ibid.*
71. Legal, E. to F. Oliver, March 31/1909. *Ibid.*
72. Therien, A. to S. Maber, March 26/1909. *Ibid.*
73. Therien, A., *op. cit*: 25.
74. Maber, S. to F. Oliver, April 12/1909. Department of Interior File. RG 15. Vol. 708. File 360530. Schedules A and C of this Report are reproduced in Appendix 5.
75. Bannerman. Disallowed Half-breed Claims. *Ibid.*
76. Therien, A., *op. cit*: 26.
77. *Ibid.*
78. Martin, Tantoo., n.d. *op. cit.*
79. Maber, S. to Deputy Minister of Department of the Interior, March 8/1912. Department of Interior File. RG 15. Vol. 708. File 360530. Cited in Hatt, F. K. *op. cit*: 41.
80. Hatt, F. K. *op. cit*: 48.
81. Drouin, E. *op. cit*: 76.
82. Therien, A. to F. Oliver. May 1/1909. Department of Interior Files. RG 15. Vol. 709. File 360530. Cited in Hatt, F. K. *op. cit*: 37.
83. Maber, S. to G. M. Ullyot. Nov. 8/1909. Department of Interior Files. RG 15. Vol. 709. File 360530. Cited in Hatt, F. K. *op. cit*: 42.
84. Hatt, F. K. *op. cit*: 42-3.

6
THE METIS SETTLEMENTS

INTRODUCTION

Although Indian reserves are common to all Canadian provinces, Alberta is unique in having lands set aside for the use of the Metis people. These eight settlements are located in central and northern Alberta (Fig. 6.1), comprise a total of some 1.25 million acres and support some 3,204 people. The establishment of these Metis "homelands" in the years 1938-9 was the result of nearly a decade of petition and investigation by and on behalf of the Metis of the province. Vital to this process was the political unification of the Alberta Metis through the founding of the Metis Association of Alberta.

EARLY NEGOTIATIONS

A number of political and economic factors coincided in the 1930's to stimulate concern for the condition of the Metis. At least partially as a result of the inadequacy of the government scrip programs at the turn of the century, most of the Alberta Metis did not own land but "squatted" on Crown land in central and northern Alberta. The transfer of the responsibility for natural resources from the federal to the provincial jurisdiction in 1930 heralded the opening up of much of the Crown land for homesteading. Since "squatter's rights" were no longer recognized, this legislation threatened to take away even that land. In addition, these political changes were being carried out against the background of the Depression, a time when the poor could not attain self-sufficiency. Many Metis found themselves unable even to pay for the licences which permitted them to follow their traditional pursuits of hunting, fishing and trapping.

However, the Metis have long been a politically active group and with the beginning of the Depression as conditions worsened for the Metis in Alberta, a province-wide organization was established in response to the people's need. The first step towards political unification involved the decision in 1929 of a small group of Metis in the Cold Lake area of eastern Alberta (see frontispiece) to petition the government for land of their own.[1] These Metis, many of whom were originally St. Paul des Metis settlers, were living as squatters at Fishing Lake on a forest reserve which was soon to be opened up to settlement. They were aware that once this happened they would no longer

be able to retain the land they occupied. Led originally by Charles Delorme, their cause won much local support. It was at one of the meetings in Cold Lake on their behalf in 1930 that Joseph Dion became involved. As an enfranchised Treaty Indian and a school teacher in the area, Dion's education and commitment to the betterment of native people made him an obvious choice to be delegated as spokesman. A series of meetings in the area followed with the consequence that councillors were elected for Metis settlements across northern Alberta.[2] In addition, some local politicians, notably Joseph Dechene, the M.L.A. for St. Paul and P. G. Davies, the federal member for Athabasca, became interested in the issue.[3]

In response to several petitions from Dion on behalf of the Metis requesting assistance in obtaining land, education, medical care and free hunting and fishing permits,[4] the Department of Lands and Mines decided to issue a questionnaire to determine for themselves the economic status of the Metis. This questionnaire covered a number of topics, including marital status, number of children, whether they had ever received scrip or taken homesteads and what livestock and machinery they owned.[5]

On December 28, 1932, L'Association des Metis d'Alberta et les Territoires du Nord-Ouest, now referred to as the Metis Association of Alberta, was formally established. Their stated aims were to convince the government to fulfill their requests as outlined in Dion's submissions.[6] Joseph Dion acted as the first President; Malcolm Norris, Felix Callihoo and first, Henry Cunningham, then Peter C. Tomkins, were the 3 vice-Presidents; and J. P. Brady was the Secretary-Treasurer (see Fig. 6.2). A number of authors have commented on the initial effectiveness of the leadership, the qualities of one man complementing the others.[7] As a result of this impetus, the Association grew very rapidly and continued to pressure the government concerning land for the Metis. A list of eleven potential sites for settlement was brought to the attention of the Minister of Lands and Mines.[8]

In February of 1933, a resolution was adopted in the Legislative Assembly calling for an investigation into the condition of the Metis population.[9] Following this, the Department of Lands and Mines continued to tabulate the results of the questionnaire. Two reports by Harvie were presented to the Minister describing the living conditions of the Metis and suggesting that land not required by white settlers should be reserved for the use of the Metis. These reports were rather pessimistic about the success of such land reserves but recommended that a Commission be appointed to further investigate the matter.[10]

One question that was passed over rather quickly was that of federal responsibility for the Metis. Some discussion did take place between provincial and federal representatives and the latter were invited to participate in the Commission, especially since many of the destitute Metis were descendants of Indians who had left Treaty.

This the federal government refused to do, however, stating that:

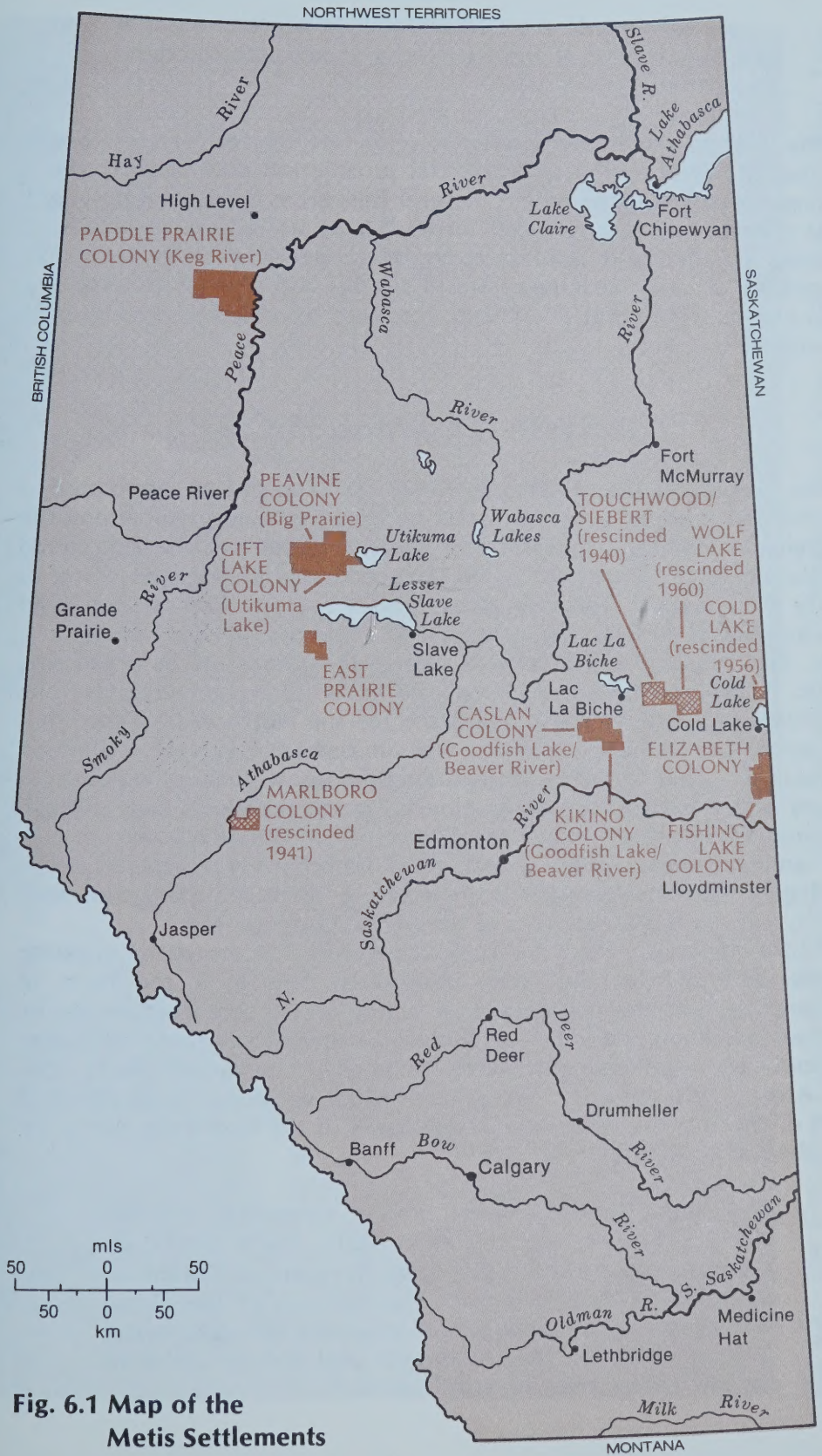

Fig. 6.1 Map of the Metis Settlements

> . . . all half-breeds are citizens and do not come under the Department of Indian Affairs or any other Federal Department.[11]

The Alberta government did not press the matter. Sanders points out that this assumption of provincial jurisdiction undoubtedly was a consequence of the then recent Natural Resources Transfer Agreement. Since Alberta had just secured ownership of its natural resources, it assumed jurisdiction in relation to the Metis because it was clear that, if anything, a land settlement would be the outcome of the enquiry. Metis claims from other provinces, however, have been handled quite differently.[12]

THE EWING COMMISSION

On December 12, 1934 the Provincial Legislature appointed a Commission in order that "enquiries be made into and concerning the problems of health, education and general welfare of the Half-breed population of the Province"[13] and that recommendations be made to rectify the situation. The individuals comprising the Commission were the Honourable A. R. Ewing, a Justice of the Supreme Court of Alberta, E. A. Braithwaite, a doctor who had been prominent in organizing public health services in Alberta, and J. M. Douglas, an Edmonton politician and a stipendiary Magistrate for the North West Territories. The evidence for the Commission was amassed through the collection of documentation of the Metis including the questionnaire responses, a history of the scrip program in Alberta, medical reports etc.; through meetings which were held by the Commission in smaller towns in central and northern Alberta; and most importantly through public hearings in Edmonton at which the witnesses included clergy, doctors, MLA's, and the representatives of the Metis Association.[14]

At the hearings, one of the first discussions concerned the question of the definition of the term Half-breed. This took the form of deliberation over the percentage of Indian blood and whether the individual was living the life of an Indian. "Respectable" Metis who were economically independent were explicitly excluded from this discussion. On several occasions[15] individual witnesses suggested that most of those Metis who were descendants of the Red River Metis fell into the last category:

> Well, there is one thing you have to remember, the original Half-breed, the Red River Metis, the majority of these people are still carrying on, they are still more or less able to hold their own. The majority of the destitute people today among the Metis were formerly treaty Indians, they are Indian through and through, except for the names, they are still Indians.[16]

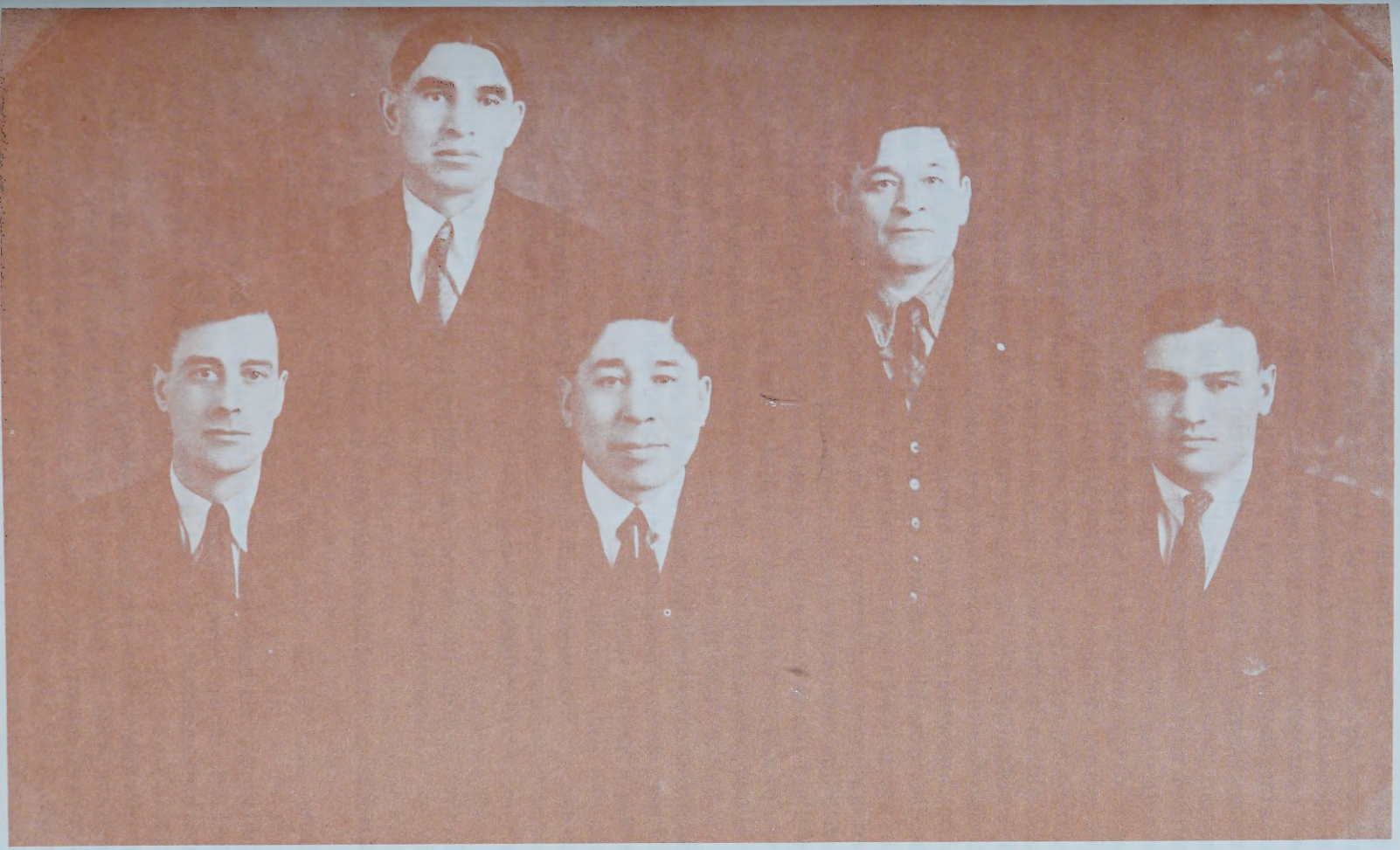

Fig 6.2 The Executive Committee of the Metis Association of Alberta. Back Row, L—R: Peter Tomkins, Felix Callihoo. Front Row, L—R: Malcolm Norris, Joseph Dion, James Brady. Glenbow-Alberta Institute

For the purposes of the Commission, it was really the latter group that was perceived as the object of investigation. Within this "nomadic" group of Metis, two further distinctions were perceived, as defined by Falkener[17] between northern and southern groups. The northern group of Metis refers to those who were able to support themselves by trapping-hunting-fishing activities; the southern group of Metis refers to those people primarily in central Alberta who because of the infringement of white settlement were unable to support themselves by those activities, or seemingly, by any other. It was the living conditions of the latter which stimulated the most concern.

As the events of the early negotiations indicated, a solution to the "Metis problem" in the form of land was an inevitable conclusion. The Metis Association leaders were urging it; Harvie had recommended it; and Ewing reiterated it.[18] For the Commission the real issue concerned the method of administration and the type of services and how they were to be dispensed. However, Ewing made it quite clear that in no way was the possible granting of land related to any question of aboriginal right; it was strictly a matter of welfare. Although evidence had been gathered concerning the scrip fraud and the subsequent alienation of land from the Metis people, Ewing dismissed it, stating that he did not "know that any good can accrue by attempting to place the blame for any particular state of affairs that exists today."[19] Nevertheless, blame was placed and, as had happened in the negotiations leading up to the establishment of the St. Paul des Metis Colony, the interpretation of responsibility was turned from the exploitation of the Metis through scrip frauds to the economic inflexibility and incompetency of the Metis:

Mr. Pennock: You were speaking of the Half-breed owning land. I suppose the great trouble with the Half-breed is, he is irresponsible.

Bishop Guy: Yes, like his white brother, he loves money but he cannot keep it.

Dr. Braithwaite: He just lives from day to day?

Bishop Guy: Yes.[20]

This paternalistic attitude was espoused not only by certain of the Commissioners and representatives of the clergy and medical profession but apparently also by some of the leaders of the Metis Association.

It has often been the charge of the new militant native leaders that former leaders were so acculturated into white society, they were no better than well-intentioned whites. In an analysis of the Commission proceedings, Hill[21] contrasts the perspectives of, on one hand, Dion, and on the other, Norris and Brady. Dion is characterized as a devout

Catholic who believed that anyone could succeed through self-discipline and effort. Although he had been born a Status Indian, he had subsequently enfranchised and appears to have subscribed to many of the views held by the white population of that time. These included the opinions that the Metis must be assimilated into the dominant society's economy and that this could only be accomplished by the replacement of their backward economy with a progressive one of full-time agriculture. He advocated the maintenance of ethnic identity through the promotion of the Metis arts and himself organized a Metis dance troupe which toured the province. This type of approach to the place of ethnic distinctions in Canadian society was to become typical of the government's multicultural programs several decades later.

In contrast, Norris and Brady were radicals who perceived "the history of the Metis and their contemporary problems in terms of a class struggle."[22] In their eyes, isolation on a settlement was not for the purpose of "raising" the Metis to some sort of economic standard after which they could melt into the greater society, but was for the purpose of permitting them to develop their own form of economy and to structure their relations with the greater society in their own way. Brady, for instance, was involved in setting up a fishing co-operative at Utikuma Lake. Similar concepts of the inseparability of a land claim and native-controlled economic development are at the heart of current native thinking on land claims.

However, Norris and Brady did not make their attitudes explicit in their testimony before the Commission. Their evidence was confined to a description of the living conditions of the Metis and an argument for the need for economic independence. Undoubtedly they soft-pedalled their opinions so as not to lose any of the concessions the government seemed on the brink of making. Their most strongly worded statements were made on the subject of Roman Catholic schools on the Settlements and in this their "radicalism" was admissible since the government was not particularly pro-Catholic. In this situation, Dion's position formed a meeting-ground for both government and more militant native leaders. Without him, the foundations of a political lobby for the Metis might not have been laid, nor the negotiations advanced to the point where the government was prepared to grant land.

The racism evident in the paternalistic attitudes of those involved in the Commission also manifested itself more specifically in a preconception of the role of the Metis in Alberta society. Comments were made about the value of education to the Metis: "too much would be a bad thing";[23] a government doctor balanced the relative merits of health, political advantage and cost: "the cost of a travelling doctor would be prohibitive unless the Venereal Disease Vote was very greatly increased";[24] and in the discussion of a land settlement, it was actually suggested that such a scheme might imply the giving up of the franchise.[25] Inevitably, these attitudes reflected upon the way in which the representatives of the MAA were received and their evidence evaluated.

Although the representatives of the MAA were Metis, had lived in the areas of the north which were being discussed and had travelled extensively throughout central and northern Alberta for the explicit purpose of seeing and evaluating Metis living conditions, they were still asked to "defend" their qualifications by answering questions as to the percentage of all the Metis in the province their membership represented and whether there was any opposition by the Metis to this new organization.[26] Other witnesses were not asked to produce their qualifications in this way nor did there appear to have been any consideration of the various vested interests of these other witnesses. For instance, in terms of the evidence on the incidence of tuberculosis and veneral disease among the Metis, Dr. Orr, who had worked for the Department of Health, tended to minimize a medical situtation which may well have reflected unfavourably on the government.[27] The evidence of the clergy as to education was not without bias, either. The Reverend Day of the United Church suggested that the "Metis problem" might be more successfully dealt with if it were left to the various church organizations.[28] The Roman Catholic representatives also were eager to see church schools on these proposed settlements and were quite defensive about the MAA's preference for nondenominational schools.[29] The St. Paul des Metis Colony was cited as another instance of Metis improvidence rather than as an example of a misuse of trusteeship on the part of the Church. It was quite possibly due to the Metis feeling about the Catholic Church after the St. Paul des Metis incident that the Church was not permitted to operate schools on any of the Settlements.

Most importantly, the Commissioners' own biases are evident in the selection of material that is presented in the final report. This document was 14 pages long and was issued on February 15, 1936. An initial discussion of the history of the Metis established that in their opinion, aboriginal rights had been extinguished through the issue of scrip, that the consequences of the scrip program had revealed that the Metis did not want to become land-owners and that through lack of experience in modern business they were improvident. The Commissioners concluded that it was the Government's responsibility to guide and encourage the Metis people's transition to a new "life to conform with that of the White inhabitants."[30] A brief page-and-a-half discussion of health problems follow which cited Bishop Guy's summation in full and the MAA's and doctors' evidence in passing. The MAA evidence as to statistics on the incidence of disease was dismissed as an over-statement. The Commission came to the ambiguous conclusion that "while the health situation is serious, it is not, except as to the particular diseases mentioned (tuberculosis, venereal disease), more serious than among the white settlers."[31] The section on education cited the statistic that 80% of Alberta Metis children did not receive any education, detailed the controversy as to what form the education should take and outlined the basic agreement on giving "to every Metis child an ordinary public school education, coupled with an

elementary training in agriculture, and in addition giving the girls elementary training in sewing and knitting."[32] The last section devoted 2 paragraphs to an impressionistic statement concerning general conditions.

Before outlining their specific recommendations, the Commissioners offered some general considerations. First, they emphasized the need to offer more than a "band-aid solution" to the situation. They intended their recommendations to be in the nature of "a comprehensive scheme which will go to its (the problem's) root and offer an ultimate solution."[33] Secondly, they stressed that this was not a period when a large and expensive scheme would be feasible, that it was better to start small and expand from there. Thirdly, they pointed out that it would be unwise to make the Metis wards of the Government, that it would be too expensive and would undermine Metis independence. Fourthly, and on a different level altogether, they stipulated that the Metis must provide the labour for all communal projects on the settlements such as schools. The Commissioners concluded that in order to survive, the Metis must adapt to a farming life and that this would require education and assistance; hence, "some form of farm colonies is the most effective and ultimately, the cheapest method of dealing with the problem."[34]

The Commission's specific recommendations dealt with the allotment of land, supervision of activities and provision of services to these farm colonies. They suggested that initially two areas should be selected for settlement, each of which would have such resources as good agricultural land, timber and fishing lakes. In addition, these colonies should be in areas where there was room for expansion and where there was freedom from interference by white settlers. Each head of a family was to be allotted land according to his capacity to use it and to be held by him and his heirs as long as there was no "misconduct" on their part. The operation of the Colony would be supervised by a Superintendent appointed by the Government. Schools would be established on the Colonies and monthly health clinics held.

Although much ado had been made by the Commission as to the fact that this was a welfare scheme, not an acknowledgment of a land claim based on aboriginal rights, they did seem to make some concession to aboriginal rights in their recommendations concerning the use of game resources:

> The Commission is of the opinion that as the Metis were the original inhabitants of these great unsettled areas and are dependent on wild life and fish for their livelihood, they should be given the preference over non-residents in respect of fur, game and fish.[35]

This preference was to take the form of free licences for hunting, fishing and trapping; and in areas where game was in danger of depletion, the right to the sole usage of those resources. In addition,

the Commission recommended that individuals who were making a living on hunting and trapping could, as an alternative to joining a Colony, ask the government for the use of a parcel of land not more than 320 acres in size. There were to be no other forms of relief available to the Metis.[36]

Assessment

The recommendations of the Ewing Commission did attempt to meet the immediate needs of certain of the Alberta Metis for land, and for health and educational services. In contrast with the St. Paul des Metis case, this program was to be implemented by the provincial, not the federal government; and the evils of third party patronage were eradicated by a direct negotiation between the Metis and the Government. Furthermore, although a certain amount of pessimism was expressed in the Commission evidence, their recommendations showed some commitment to the project, beyond that which resulted in the "planned failure" of St. Paul des Metis.

However, in other respects, this policy was predicated on the same concepts that had influenced earlier native policy. The Ewing Commission Report certainly expressed a very paternalistic attitude towards the Metis and it laid a high priority on expediency in arriving at a solution. A major inadequacy lay in its failure to define consistently the status of the Metis and the extent of the rights flowing from that status. The Report makes it clear that the Metis were to be considered as ordinary citizens. This program to "protect" the Metis was to be considered a response to a claim which was based, not on legal rights stemming from Metis aboriginality, but on a state of destitution stemming from Metis ethnic characteristics. This attitude, of course deliberately ignored historical factors and, particularly, the prevalence of destitution among people who had left Treaty. The establishment of the "farming Colonies" was not in any way to be a recognition of aboriginal claims but was explicitly intended as a welfare program.

However, despite the description of the program as a welfare scheme, it was hedged about with the restrictions of ward-status. The Metis, for instance, unlike other citizens, were not eligible for welfare through the regular channels. Thus, as in the case of St. Paul des Metis, the government used an undefined but somehow special status for the Metis. This lack of clarification meant there was no clear standard by which to determine and to evaluate policy, a vacuum which permitted the domination of less desirable factors, such as paternalism and expediency.

THE METIS POPULATION BETTERMENT ACT

The 1938 Betterment Act and Its Amendments

On the basis of the recommendations submitted by the Ewing Commission, the Provincial Legislative Assembly passed the *Metis*

Fig 6.3 Louis Lariviere hauling logs at Wolf Lake, Alberta. Spring, 1942. Glenbow-Alberta Institute

Population Betterment Act on November 22, 1938 (see Appendix 6). The introduction to this Act states that the ways and means of giving effect to such recommendations had been arrived at through negotiation between the provincial government and the representatives of the Metis population. According to Metis sources[37], the Act was actually written by Dion and Tomkins and revised by them according to whether sections were accepted or rejected by the provincial representatives.

Under the Act, the Minister responsible was authorized to promote the formation of associations composed of Metis who were unable to support themselves and to cooperate with these associations in formulating schemes for the purpose of bettering Metis welfare and for the settlement of the Metis on the lands put aside for that purpose. Metis were defined as persons of mixed white and Indian blood who were neither Indians nor Non-Treaty Indians, as defined in the *Indian Act*. Each Settlement Association was to formulate a constitution and by-laws prescribing the qualifications and conditions of membership and to elect a Board. The purpose of the Board was to work with the Minister on the above-mentioned projects. The Lieutenant-Governor-in-Council was empowered to reserve any unoccupied Provincial Lands for the members of these associations and to prohibit any hunting or trapping in these reserved lands by anyone other than an association member.[38]

Although the 1938 Act proposed essentially a co-operative venture between the Minister and the Settlement Associations in improving the welfare of the Metis, subsequent amendments were for the most part directed towards increasing the control held by the government over this "partnership."

In 1940, the term "Metis" was re-defined as a person with not less than ¼ Indian blood but who was neither an Indian nor a Non-Treaty Indian according to the *Indian Act*. This limited the number of successful applicants for membership in a Settlement Association. The revision deleted the phrase that indicated only destitute Metis could benefit from the plan and it outlined a wide range of administrative powers that the Minister could wield.[39]

In 1941 a third amendment empowered the Lieutenant-Governor-in-Council to create game preserves on the Settlements.[40]

In 1942 a fourth amendment empowered the Lieutenant-Governor-in-Council to constitute lands occupied by a Settlement Association as an Improvement District. One of the implications was that he was enabled to impose a minimum tax on each member in lieu of the usual assessment and taxation to which they were not liable.[41]

In 1952 an amendment was introduced which struck out the 1938 paragraph stipulating that each Board was to be composed of individuals elected from the members of the Settlement Association. In its place was put a new sub-section stating that the local Board must consist of a chairman who would be the local supervisor of the area as appointed by the Metis Rehabilitation Branch of the Department of

Fig. 6.4 Ploughing on Ghostkeeper farm, Keg River 1942. Glenbow-Alberta Institute

Public Welfare and four Settlement Association members, two of whom would be appointed by the Minister and two of whom would be elected by the members of the Settlement Association. This, of course, gave the Minister a certain amount of control over 3 of the 5-person Board.[42]

Orders-in-Council and Regulations Under the Metis Betterment Act

The first Orders-in-Council stemming from the *Betterment Act* involved the formation of a number of settlement associations in 1938 and 1939. A committee was created to select appropriate lands to be reserved as colonies. The members of this committee comprised both representatives of the Metis Association (Dion, Brady, Norris and Tomkins) and of the government (Buck, Rees and MacKenzie).[43] Initially, twelve locations (See Fig. 6.1) were chosen, of which one (Pigeon Lake, #5) was rejected out of hand because no settlement association was formed there. Two others, Marlboro #6 and Touchwood/ Sibert Lake #8, were closed because too many lands had been reserved for other purposes in those areas.[44] The remainder were established by Orders-in-Council in 1938 and 1939.[45] Subsequent legislation concerning the reservation of land itself has dealt mostly with the addition and subtraction of lands to the Settlements, the amalgamation and splitting of Settlements, the changing of their names, etc. Perhaps the most controversial redistribution of land was the closure of two settlements, Wolf Lake (#8A) and Cold Lake (#9) in 1960. Cold Lake was uninhabited but 11-12 families were living at Wolf Lake. The rationale behind the closure of Wolf Lake seems to have been that it was inconvenient and impractical to provide services to such an isolated area which was being used by only a few families, most of whom were always away hunting and trapping. Undoubtedly the fact that the Settlement bordered the newly planned Primrose Lake Air Weapons Range played a large role in the decision.[46] Despite petitions to stay, the Wolf Lake families were moved to other Colonies less capable of supporting them but more easily administered.

The closure of a Colony despite petitions to the contrary underlines one of the eventual consequences of the structure generated by the new legislation, i.e., the disintegration of the political unity of the Alberta Metis. The Metis Association of Alberta had originally formed to act as mediator between Metis/Non-Status Indians and the government. It had been very successful in its immediate goals of securing land and better health and education services for the Metis. However, after the passing of the *Betterment Act*, the Department of Health and Welfare took over the role of mediator. Brady had foreseen these consequences all too well and in 1940, he and Norris had attempted to reorganize the movement around a council comprising representatives from each settlement.[47] Nevertheless, friction within the MAA executive coupled with encouragement by the Department of Welfare

Fig. 6.5 Paddle Prairie Schoolhouse. Federation of Metis Settlements

for each Settlement to negotiate directly with them undermined these efforts to keep the Association politically relevant.[48] Not until 1966 would the Association come out of its eclipse.

The regulations passed under the *Betterment Act* built up a bureaucracy through which the Settlements were administered. At first, the Settlements were under the general aegis of the Department of Health as one of the responsibilities of the Bureau of Relief. The Bureau also handled similar projects involving the relocation of the urban poor to rural areas and their provision with the basics to start farms. After 1944 the administration of the *Metis Betterment Act* was transferred to the Department of Welfare and a specific section, the Metis Rehabilitation Branch, was developed to deal with the Metis Settlements. Later, this name was changed to the Metis Development Branch.[49]

Although the Metis leaders in 1938 may have been envisioning a co-operative venture between State and Metis, the province was making its own plans and these were radically different. Among the documents on the Half-breed Inquiry filed in the Premiers' Papers is an anonymous report dated 1938. It is entitled variously "Plan for Settlement of Half-breeds in a Colony" and "Report Regarding the Establishment of the Half-breed Population of Lac La Biche." The inclusion of a budget and the reiteration of some of the Ewing Commissioner's suggestions indicate that this may well have been the work of a government planner.[50] As in the instance of St. Paul des Metis, the Paraguayan Reducciones were used as an explicit model for the operation of a Metis farming colony.

This paper begins with a re-statement of the Ewing Commission's conclusion that some "form of farm colonies is the most effective and, ultimately, the cheapest method of dealing with the problem" and proceeds to outline the example of the Paraguayan Reducciones. Emphasis was placed on the success of the Jesuits in inducing a naturally indolent native to work. Success was measured in both monetary and temporal terms, i.e. the Jesuits became quite wealthy and the institution survived for some century and a half. The author suggests that the nature of the Guarani Indians better parallels that of the Alberta Treaty Indian but he still thinks that a similar system would work wonders with the Metis who is characterized as "a good big child with the qualities and deficiencies of that age."[51]

In an analysis of the implications of this report, Sharpe[52] investigates the question of whether, in view of the recommendations in this plan, the Metis colonies were intended to be a form of social welfare or a system of enforced labour, as in the case of the Paraguayan Reducciones. Four suggestions made by the author of this plan lead to Sharpe's acceptance of the second conclusion: first, the Half-breed Plan made it clear that although the Metis would not be compelled to move into the Colony, no other form of government relief would be available to them, i.e. the "choice" for the destitute was to move onto the Colony or to starve; secondly, once in the Colony, in addition to working their own land, the Metis would be expected to

work on government enterprises, such as a farm, for a very low sum of money in order to gain "the necessary experience . . . to do likewise themselves."[53] Sharpe states that the suggested wage of $20.00 a month was approximately 1/5 of the average labourer's wage at that time. Thirdly, the Superintendent employed by the government would not only regulate all internal activities of the Colony but would act as a liaison between the Metis and any outsiders as in, for instance, business transactions where Metis were selling their produce; fourthly, instead of being given money for wages or for produce sold, the Metis would receive Government vouchers which could only be spent on the Colony. This last stipulation was made in the hope that "the vouchers would also gradually induce the Half-breed to remain in the colony instead of roaming all over the country."[54] In other words, as Sharpe points out, "although it appears that the government is helping the Half-breed, in fact, the Half-breed is producing for the government."[55] Although the government insisted that the Metis were not wards and that wardship would undermine their independence, racist and paternalistic attitudes fostered the creation of a ward-like system. The question remains as to the degree to which this wardship was exploited: that is, to what extent were the recommendations of the Half-breed Plan implemented on the Settlements?

As to the first point, since the Settlements were what the majority of the Metis had wanted and lobbied for, the fact that the government offered little alternative does not seem to have posed much of a problem. There was, of course, always the option of moving to northern Alberta where hunting and trapping were still viable economically.

The second point refers to the expectation that the Metis work both on their own land and for a very low wage on government enterprises. The conditions of the first part are very clearly outlined in various Orders-in-Council; information as to the second is less well-documented but indicates that this suggestion was not carried out. The emphasis within the Colony was, of course, on agriculture. After a prospective settler was accepted by a Settlement Association, he was allotted a parcel of land on which he was expected to comply with regulations similar to those for homesteading. He had to become resident on his land within 30 days; build a house within 90 days; and within one year, erect suitable shelter for his livestock or other improvements worth up to $50.00 and prepare and cultivate a garden of suitable size to meet the requirements of his family. He was also to clear and grub 2 acres of land per year until 15 acres were cleared and grubbed.[56] One settler comments on the early days at East Prairie:

> We were given tools and machinery to use for our farming needs. We were also given seed grain to plant in springtime, which we had to replace later from our crop . . . As far as I can remember, you had to improve the piece of land you were given — like clearing, breaking and having a dwelling — before you could get a

> logger's permit or a trapper's licence. The logging permits were limited to 50,000 feet of lumber (if the settler were married) for making our homes, and also for making a living.[57]

After the requirements were met, a settler would be granted a Certificate of Occupancy. This could be revoked by the Minister if a settler was not complying with the regulations or the bylaws of the Settlement Association. Long-time settlers have commented that these certificates were to have had the force of 99-year-leases, but the Orders-in-Council do not state this.[58] By the 1950's the Certificate of Occupancy was no longer granted.

Government-owned operations were established on the Settlements but these do not seem to have been the exploitative enterprises recommended by the Half-breed Plan. Early programs appear to have paid up to standard:

> The first grant we got from the Metis Branch for creating jobs was six hundred dollars. The supervisor got some jobs going, such as fencing, fixing roads and painting. We earned sixty cents an hour for these jobs.[59]

Later, farms were established throughout the Settlements for the purpose of providing employment (usually just seasonal work for 4-5 people) and seed for the following year for the settlers. These were essentially non-profit. The government also ran Settlement stores and an area herd-cattle sharing program. In the latter, settlers cared for the Branch's cattle and every year returned to the Branch one calf for every four cows maintained. The settler kept the other 3 calves and after 5 years, owned 2 of the cows outright. These enterprises ceased prior to the 1970's.[60] Settlers have also commented that when the Branch ran the sawmill, they bought logs from the settlers at a higher price than the mills in the surrounding area paid.[61] Early settlers have made reference to working without pay on projects that were for the communal good, such as building schools and fighting fires.[62] This stipulation, in fact, was made in the Ewing Commission Report. Eventually, after settlers complained that their families were going hungry while the men were building the school, the Branch provided food for the workers.[63]

The amendment to the Betterment Act in 1942 gave the Minister power to levy an annual tax. At first, these were paid in goods, that is, with wagonloads of wood for the heating of the school, with calves (which is how the herd-sharing program started) or with two days labour.[64] Later, these payments were made in cash.

One area of finances which is vague for the early years concerns the administration of the Settlement Trust Fund. In 1943 an Order-in-Council established the Metis Population Betterment Trust Account, "held by the Provincial Treasurer on behalf and for the benefit of the

Settlement Associations." It was to comprise all monies accruing from a) timber dues and fees accruing from grazing leases, hay permits and leases of any parcel or parcels of land, b) other monies derived from the operations of community activity, c) fines. These monies were to be spent on the construction of permanent community improvements and for other purposes contributing to the advancement or betterment of the members of the Settlement Association.[65] Early settlers recall that there was a good deal of logging done on some of the Settlements, but no one knows where that revenue went. At that time the settlers themselves were not in a position to request an accounting. As the years passed, ledgers were lost and as a result, no accounting has ever been made of that money.[66]

The Plan's third recommendation was that the government-appointed Supervisor should control all internal activities in the Settlement and all external relationships involving business transactions as well. Following the Ewing Commission's recommendations, an Area Supervisor was assigned to a Settlement. In 1939, this duty was performed by Dion for the eastern Settlements and by Tomkins for the western Settlements, a dual role for these Metis Association representatives which was the cause of some friction between them and the other members of the Executive.[67] After this first year, the positions were filled by civil service competition, often hiring one Supervisor for two Colonies. The settlers were not always happy with the qualifications of the Supervisors; it is now felt that there should have been a consistent effort to obtain personnel who had degrees in agriculture and who could have acted as resource people. One exceptionally poor choice, for instance, would seem to be the appointment of Dr. Quesnel to the Kikino Settlement 1930-1941. Dr. Quesnel was the author of a memorandum to the Ewing Commission on the subject of the health of the Lac La Biche Metis in which he freely expressed his low opinion of the Metis as an "ignorant, indolent race" possessing a "subnormal mentality."[68] This was hardly the person to lead the Kikino Settlement Association to self-government and independence.

A Supervisor, as the representative of the Metis Rehabilitation Branch, was initially responsible for all internal aspects of the Settlement. The Branch operated all schools, supervised the construction and maintenance of roads, supervised subsistence activities (agriculture, ranching, fishing, hunting, trapping), the construction of housing, the issuing of assistance, etc. Originally, the Local Board comprised of Metis was set up to confer with the Minister on plans to improve Metis welfare. These became Settlement Councils which served in an advisory capacity to the Supervisor, the Minister's representative on the Settlement. The Supervisors of course could follow such advice at their own leisure. The 1952 amendment to the *Betterment Act*, increased the Supervisor's, and hence, the Branch's power, by installing the Supervisor as chairman of the Local Board. Contrary to the Plan's recommendations, however, the Supervisor did not serve officially as liaison for individual transactions between settlers and people outside the Settlements.[69]

The fourth recommendation of the Plan involved the issue of vouchers instead of cash for work projects. This recommendation was incorporated into the Settlement administration. The vouchers could be used for certain commodities such as food but not for anything which could be construed as a luxury item, such as tobacco. The settlers protested the issue of vouchers for pay, arguing that major purchases of machinery or stock required cash. In the early 1950's pay for government projects was changed to half-vouchers, half-cash, and eventually to cash in full.[70]

In summary, the recommendations of the Half-breed Plan do not seem to have been carried out to the extent that the Settlements could actually be characterized as labour camps. Those government enterprises which did exist on the Settlements do not appear to have exploited Metis labour, although one should point out that the government did draw substantial revenues from natural resource exploitation on the Settlements. The implementation of the voucher system does lend credence to the idea that this blatantly racist Half-breed Plan did have some standing as an official government document. This is a rather chilling revelation of the sentiment involved in the behind-the-scenes policy-making. The Paraguayan Reducciones were intended to force a people into economic and social dependence. That any government could consider attempting to implement even part of that system in the name of planned economic independence casts a dubious light on their motives.

NEW DIRECTIONS FOR THE SETTLEMENTS

In 1969, the Metis Association (MAA) proposed to the Human Resources Development Authority (HRDA) that the *Metis Betterment Act*, the Metis Settlements and the Metis Rehabilitation Branch be examined by a Committee from the Public Service Commission of Alberta. This Committee, called the Metis Task Force, was established comprising representatives of the HRDA, the MAA, the Public Service Commission and the Departments of Social Development, Municipal Affairs and Education.

In a very general sixteen page report presented in 1972, the Task Force identified as a major problem area the slow pace of economic development on the Settlements. This was attributed to the unavailability of investment capital since it is and was impossible to mortgage land of which the Crown reserved ownership. The Report commented on the economic conditions under which the Settlements were established, the rising costs of their maintenance and pointed out ominously that "it was not necessarily the feeling of the (Ewing) Commission that Crown lands for the Metis people should be a perpetual commitment."

To overcome what the Task Force perceived as a deterioration into wardship for the Metis on the Settlements, they recommended that a

combined program of local self-government and economic development should be undertaken by the Metis themselves with community workers providing stimulation and assistance, particularly in terms of acquiring access to government funds. A major first step was to be the establishment of the Settlement areas as Improvement Districts in more than name only and the report foresaw the future eventuality where the Metis might wish to buy their own land. The Report also pointed out that the existence of the Metis Development Branch for the Settlements alone was blocking government involvement in other Metis communities. It recommended that all Metis communities should have the opportunity to participate in a Metis Development Program.[71]

Although the emphasis of the Report on local autonomy may have been welcome, the Settlement Association members were alarmed by references to the possibility of lifting the boundaries of the Settlements. These references were made both in the Report and in the meetings the people had held with the Task Force.[72] To meet this potential threat they once again began to work towards political cohesion. In 1973 the Alberta Federation of Metis Settlements was formed and a program to strengthen the inter-relationship of the Settlements was started. With the decline of the Metis Association in the early 1940's there had evolved a one-to-one relationship between the Department of Health and Welfare and each of the Settlements. The Federation bridged this fragmentation by bringing together the chairpersons of each of the eight Settlement Councils and electing four Executive Members. By instituting regular meetings between Settlement Councils and developing a Federation Constitution and by-laws, the Federation has sought to unify the Settlements once again. The formal incorporation of the Federation in 1975 marked the beginning of a new era in Settlement history.

Currently the Federation sponsors a number of activities to help the Settlements achieve the aims of autonomy and self-determination for which they were originally set up. A local government education project has been established on the Settlements and at the same time the Metis Development Branch is gradually being phased out through the non-replacement of staff. Eventually the Settlements will be completely self-governed. The Federation has initiated historical research to clear up the question of the Settlements' legal status; and also started legal action in 1974 to obtain the profits from oil and gas sales on the Settlements for the Metis Betterment Trust Fund.[73] These could amount to some 100 million dollars.

The Federation's legal case is based on the wording of the *Betterment Act*. Although the Act makes no explicit statement of the extent of the rights of the Metis people to the lands they occupy, its wording does suggest that the Settlement Associations are entitled to the proceeds of the sale of all natural resources on the Settlement:[74]

1. *The Betterment Act* of 1938 states that the Minister was entitled to reserve lands according to the ordi-

nary methods of doing so under the *Provincial Lands Act*. Such reservation "ordinarily" includes the mineral rights.

2. The Orders-in-Council reserving the Settlement lands specified that "any such members entering on the above described land are entitled to Surface Rights only until regulations governing the administration of the various colonies have been approved." Since such regulations were approved in 1940, the inference is that the Settlement Association members are now entitled to more than just surface rights.

3. Orders-in-Council 1244/51 describing the sources of the Settlement Trust Account monies make reference to "all moneys received from the sale or lease of any other (than timber) of the natural resources of the said areas." Thus, the proceeds of these oil and gas sales should go into the Trust Account.

Although the legal case is not yet of long duration, it has not been without its incidents. In June of 1979, a "raid" on the Settlement files took place in which individuals associated with the Department of Social Services confiscated files from six of the eight Metis Settlements. These were removed at the request of Mr. Jean Cote, counsel to the Crown, in consultation with representatives of the Department of Social Services and Health. The removal of the files was instigated by Mr. Cote upon his hearing that a representative of the counsel for the Federation was reviewing files at the Settlement Association offices. Employees of the Department of Social Services were instructed to select "Government files" from those at the Settlement offices, inform the Settlement clerks that these were for auditing, and bring the files to Edmonton where the material would be reviewed in preparation for the Examination for Discovery and the Affadavit of Documents required in the court case. Only two Settlements refused to give up their files. The rest of the files were brought to Edmonton, reviewed briefly and a small number of files judged to be other than "government files" were returned to the Settlements. The remainder were reviewed in detail and then returned to the Settlements.[75] Representatives of the Metis Settlements, however, insist that some of the materials are still missing.[76]

The President of the Federation in 1979, Maurice L'Hirondelle, requested that an investigation be carried out by the office of the Ombudsman. The Provincial Ombudsman found that, although it was necessary for the government to have access to this material as part of the preparation for the Examinations for Discovery and for the Affadavit of Documents, the manner in which this was accomplished was unfortunate. Alternate means, such as simultaneous review of material at the Settlement Association offices, should have been discussed. The actual legal status of the ownership of the files and the Settlement

Association offices is ambiguous: the Department of Social Services had previously emphasized the Metis ownership of these as part of their general program to encourage local autonomy. The Provincial Ombudsman decided that in a *moral sense*, the Department of Social Services was in the wrong in removing material that belonged, *at least morally*, to the Metis Settlement Associations.[77]

In his report, the Ombudsman made eight recommendations to correct, not only the immediate "moral wrong", but a general situation which was perceived as the result of an outdated legislation and a paternalistic government policy. Two of these recommendations were specifically directed towards "the moral wrong": the Department of Social Services and Community Health was to issue a written apology to the Chairman of each of the Settlement Associations for the manner in which their representatives sought information from the files held in the offices on the Settlements; but the records of the Department personnel directly responsible for the decision to remove the files should not be adversely affected by this incident. This reflects the ombudsman's conviction that these individuals sincerely felt that these files belonged to the government and that their removal was appropriate.

Three recommendations were directed towards improving the Settlements' participation in their own government in day-to-day matters: more effort was to be made to bring Metis of suitable ability into all levels of the Branch; the status of clerks in each Settlement Association office was to be changed from that of government employees to employees of the Settlement Association itself, but without loss of the benefits to which they were entitled through their employment with the provincial government; more effort was to be made to include Settlement representatives in decision-making and to accord them greater powers over the expenditure of funds. The Ombudsman had observed that whereas the Settlement Councils were often consulted in minor matters, they had very little influence in major ones.

The final three recommendations made by the Ombudsman were directed towards a change in the legislative and administrative structure which determines the status of the Settlements. A joint committee composed equally of Settlement Association and Government representatives was to be struck with the following aims: to amend the *Metis Betterment Act* to make it relevant to the contemporary situation; to review the current status of the Metis Development Branch within the Department of Social Services and Community Health, where it appeared to hold a low priority; and to consider the possibility of an alternate affiliation, perhaps with the Native Secretariat or with the Department of Municipal Affairs; and finally, to initiate a program to transfer the status of the Settlements formally to Improvement Districts, whereby local autonomy could progress to the point of complete self-government by the Settlements. To accompany this program should be a speedy resolution of the mineral rights issue, because according to the Ombudsman's observations, the provincial government had been reluctant to endorse any programs for local self-government lest they should adversely affect their own defense.[78]

This rather sweeping program of change recommended by the Ombudsman has not been initiated as a whole, although in October of 1980 the Metis Development Branch did become affiliated with the Department of Municipal Affairs.[79] The members of the Executive of the Federation of Metis Settlements, however, felt that the Ombudsman did not fully appreciate their position. For instance, the advocation of a speedy resolution to the natural resources case so that further programs for local autonomy may be developed is not at all in the best interests of the Settlements. Rather, the local autonomy programs must be expanded now so that any money received in the future from legal settlements may be more efficiently administered by the Settlements. The Federation makes it clear that there are other issues the Settlements have yet to take up with the provincial government, such as compensation for railways, provincial highways, etc., that run across Settlement land.[80] In addition, the Ombudsman appears to have been working with the same framework of "citizen: ward" that the government has espoused and thus has interpreted the development of local autonomy as a movement towards ordinary citizenship. His suggestions particularly as to the transformation of the status of the Settlements to Improvement Districts, appeared to be a step in the direction of lifting the Settlement boundaries. This, of course, would not be at all acceptable to the Metis.

SUMMARY AND ASSESSMENT

In this and the previous chapter we have emphasized the lack of definition by the government of the status of the Metis and the consequent lack of consistent policy as to whether the Metis were to be treated as citizens or wards. The Federation's stance is that the *Betterment Act* of 1938, written by the representatives of the Metis, establishes a legal status for the Metis on the Settlements through the formation of those legal entities, the Settlement Associations, regardless as to whether this legal status has been recognized or not by the government up to the present. The Federation also maintains that subsequent decisions by the Minister responsible for the administration of the Act to make amendments are in fact, in violation of the Act since they were effected without consultation of the Settlement Associations.[81]

Another line of argument concerning the status of the Settlements and of the Metis developed by Sanders [82] holds that the Metis and the lands reserved for the Metis fall within the category of "constitutional Indians" and "constitutional lands reserved for the Indians." The first point is based on the following reasoning:

1. Neither the *BNA Act* nor the *Manitoba Act*, both constitutional documents, define the terms "Indian" and "Half-breed" when used.

2. It has been established legally that there are people outside the *Indian Act* definition of "Indian" who are nonetheless Indians within the meaning of the term in the *BNA Act,* e.g., Inuit.

3. Moreover, even under the *Indian Act*, the categories of "Indian" and "Half-breed" are not mutually exclusive. Certain mixed-blood people, even Euro-Canadians, have been classified as Indian and subject to the *Indian Act*; on the other hand, certain Indians who were already under the *Indian Act* were permitted to leave Treaty and take Half-breed Scrip.

Therefore, there is a case for considering the Metis as constitutional Indians. This implies that, as specified by the *BNA Act*, they come under federal, not provincial, jurisdiction. Similarly it can be reasoned that Metis lands, such as the Settlements, fall under the category of "Lands Reserved for the Indians."

1. It has been established legally that the phrase "Lands reserved for the Indians" does not refer wholely to "Indian reserves" for the purpose of the *Indian Act*.

2. Neither is it necessary for lands to be reserved by the federal government or by treaty for them to come within the constitutional category. Reserves have been established by a province without any inter-governmental approval or transfer and have subsequently been regarded as reserves within the meaning of the *Indian Act*. The catch is, that once established, the province lost jurisdiction over these lands.

Thus, a case can also be made that the Metis Settlements come under this category of "Lands reserved for the Indians." One of the most immediately obvious implications of this is that established Settlements cannot be terminated by the Province. It could then be argued that the Province of Alberta had no authority to close the Wolf Lake and Cold Lake Settlements.

A final criticism of the Metis Settlement plan is that it ignored the needs of certain groups of Alberta Metis for land reserves. Aside from the established Settlements, the government has attempted to satisfy claims on an individual basis. The Ewing Commission suggested that Metis in the north be given the use of 320 acres if they did not wish to join the Settlements. Perhaps as a result of this recommendation there do exist lands reserved for the use of the Metis in the following areas: Grovedale, Lac La Biche and Eureka River.[83]

However, the confinement of the Settlements to central Alberta and the stipulation that they could only be located in areas where land was

not reserved for other purposes left certain groups of Metis out in the cold, notably those of Grande Cache and Fort Chipewyan. Both these groups had been seriously affected by the establishment of large National Parks in their hunting and trapping territories. The case of Grande Cache will be discussed in the following chapter. The Fort Chipewyan Metis were in an awkward position in connection with access to Wood Buffalo National Park. Although the livelihood of all native groups was increasingly threatened by the administration of the Park from 1922 on, the two treaty Indian bands apparently received preferential treatment in some respects.[84] Subsequently in 1937, the Chipewyan band did receive a reserve in the area, but the Cree Band and the Cree Metis were and still are landless. In addition to the Grande Cache and Fort Chipewyan Metis Groups, those Metis of the Isolated Communities north of Lesser Slave Lake did not receive any benefit from the Metis Settlement plan. The government's failure to fulfill the needs of all Alberta Metis in terms of the land they did receive as Settlements has ensured a long period of negotiation and litigation.

Acknowledgments

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7
THE GRANDE CACHE LAND SETTLEMENT

INTRODUCTION

Throughout the history of Metis-government relations, the motivation behind the granting of land has always been the provision of a base for economic development. In the cases of the scrip program, the St. Paul des Metis Colony and the Metis Settlements, this economic development was to involve the rejection of such "backward" economic activities as hunting, trapping and fishing and the adoption of the "progressive" agricultural economy. A few tools, some livestock and the use of a land surface were necessary and sufficient for economic development.

As the economic image of the West changed from agriculture to the fossil fuel industry, the view of what economic development involved enlarged to include the revenues of such natural resources. The use of a land surface alone is no longer considered sufficient. Certainly the Metis Settlements' legal case attests to this transformation in perspective. Futhermore, these new resource industries began to move into areas that were never suitable for agriculture in the first place and their highly disruptive presence there posed many problems for native peoples who up until then had made satisfactory livelihoods from hunting, trapping and fishing. For the majority of onlookers from the greater society, involved only as potential benefitors from oil and gas sales, these "frontier clashes" appear to be directed towards making some kind of rigid choice for the land: whether it should be used solely for "unproductive" traditional economic pursuits or whether it should be used for industrial development. Since the former is unthinkable, it must be the latter and the solution to the need for an economic transformation of the native is to provide the means to ease their way into the industrial development complex: training programs to produce skilled labourers; and preferences for local native businessmen in terms of contract work. The native viewpoint, however, looks toward the structuring by natives of their own economic relationship with the greater society, rather than the greater society molding them to fit into the industrial structure. To most natives, the immediate economic advantages of employment are far outweighed by the long term effects of social and environmental disruption. In the North West Territories the Dene claim for self-determination advocated a two-sector economy: a

non-renewable resource sector under Euro-Canadian ownership but subject to native control; and a renewable resource sector under native ownership. The latter sector would involve exclusive rights for natives in terms of hunting, trapping and fishing as well as control over the management of animal, timber and water resources. The strengthening of the renewable resources sector would buffer the natives against the economic impacts of fluctuations in world markets for the non-renewable resources. The Dene claim, however, that control over renewable resources alone is not sufficient since developments in the non-renewable sector are sure to affect renewable resources. A prime target in the facilitation of the relationship between these two sectors would be to change the public and governmental attitudes that maintain that only non-renewable sources can make a significant contribution to the national economy.[1]

A precursor to the Dene land claim was the land settlement at Grande Cache, Alberta (see frontispiece and Figure 7.1). It represents the only case in which the province of Alberta has recognized native title to land based on lengthy occupation of the land. This case also served as a model for others in that negotiations were carried out with the natives representing themselves. This formation of a local native political organization with the ultimate goal of planned economic development by and for natives brought about a unique rapprochement with the local Euro-Canadian business community. Native control over their own land and resources meant that the local natives and Euro-Canadians would co-operate in planning development projects at Grande Cache. This rosy future, however, depended very much on the provision of initial economic development funds, funds which, despite the promises of the government, never materialized.

HISTORICAL BACKGROUND

The modern Metis population of the Grande Cache area is derived for the most part from families long established in the area. The earliest historic sources record endemic populations of Beaver Indians along the Peace River and of Sekani, Shuswap and Assiniboine Indians south of that area. The Cree moved into central western Alberta possibly sometime in the late 1700's. In addition, Iroquois and Ojibway were brought west by the fur-traders to serves as engage's in the first few years of 1800. Some of these people remained in the West after their period of service ended to marry among the local native groups and work as free-traders. One family of Iroquois, the Waniyandes, settled in the Grande Cache area; others, the Joachims and Karoconti, settled at Jasper House. Also based in Jasper House were the Moberleys, a Stoney Metis family, and the MacDonalds and Delormes, both Cree Metis families. After the turn of the century the Plantes and the Agnes from Lac Ste. Anne moved into the Entrance area.[2]

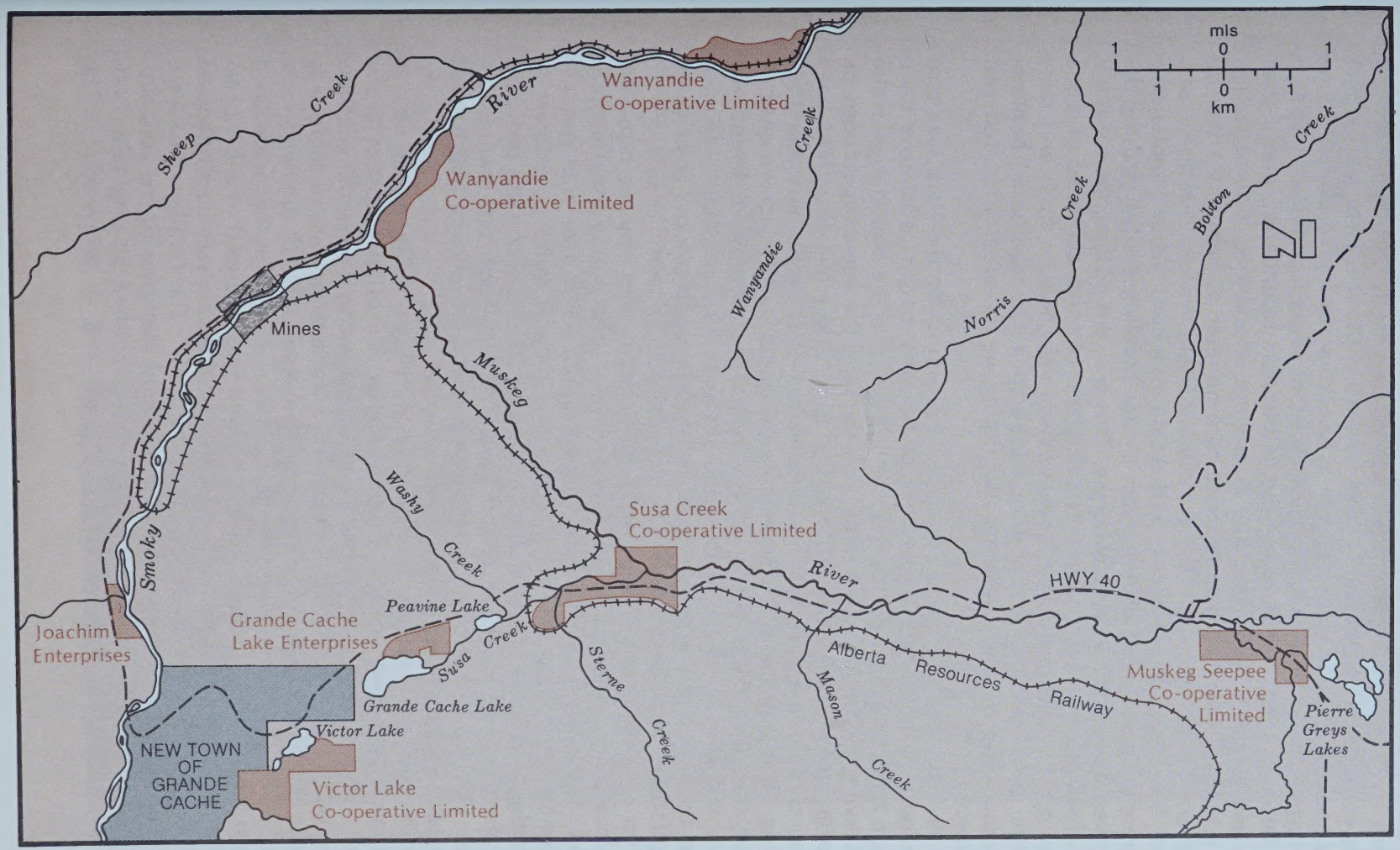

Fig. 7.1 Native Land Settlements of the Grande Cache Area Taken from B. Morrison, 1977

The history of these people in this area in the 1900's is one of repeated threatened and actual eviction. In 1907 Jasper National Park was established and by 1910 those families without title to land within the boundaries were forced to move. According to one individual living at Jasper at that time, the dispossessed families were promised freedom to settle on land anywhere outside of the park boundaries, and if they refused to move, their traps and guns were impounded. Compensation to a total of $5025.00 was awarded to a number of people for the improvements on their land. These included Evan, William, Adolphus and John Moberly, Isadore Finlay and Adam Joachim.[3] After negotiations were concluded, most of the Jasper House families relocated along the Muskeg River not far from Entrance. This was not an easy task since it involved the moving of farm machinery and of some 200 head of stock over old hunting trails. These families were the first to farm and raise cattle in this area as a means of augmenting the traditional hunting, trapping and fishing. Attempts at farming in this area soon fell off, however.

In 1910, the Athabasca Forest Reserve adjoining the Park was also created. By 1916, the Department of Forestry began to discuss once again relocating the Metis who were living within the boundaries of the Reserve and who appeared to be contravening the game regulations by hunting there. The Metis protested, stating that when they had been evicted from the park there had been a verbal agreement that they could settle anywhere. The government argued that the agreement had been that they could settle on any *vacant surveyed land*. Eventually Cory, the Minister of the Interior and Sifton, Premier of Alberta decided that the rights of the people to a place to live had priority over game regulations and the matter was dropped.[5]

In the 1930's when the Metis Association was making representations to the Minister of Land and Forests concerning locations for Metis Settlements, the Grande Cache-Muskeg River area was strongly recommended. The Grande Cache Metis showed quite an interest in the plan and some 29 individuals completed the questionaire provided by the Department of Lands and Forests.[6] Two local representatives, Isaac Plante and Adam Joachim were elected to the council that formed the basis of the Metis Association of Alberta.[7]

That there was no immediate selection of land in Grande Cache was perhaps due to the amount of land reserved for other purposes in the area. It had been one of the Ewing Commission's recommendations that lands be reserved for Settlements only in areas where there was space for them to expand, if required. However, in 1939 the need for a land reserve in this area became critical as a dozen families were once again faced with eviction. The government had arranged to sell 12 sections of land to an American, a Smith, but this sale was dependent on the availability of surrounding lands for lease. The families that were on the lands that were to be leased included members of the Joachim, Delorme, MacDonald, Moberley and Finlay families, all originally from Jasper House as well as several Agnes' and a Winyande.[8] The

Fig. 7.2 Indian cabin near junction of Grande Cache Creek and Muskeg River, Alberta. 1919. Public Archives of Canada

American buyer did offer to compensate these families for improvements they had made on their land and to pay the costs of their move. However, the question of where to move was not easily solved.

The Marlboro Settlement had been established to the east in 1939 and the government suggested that the Grande Cache Metis might move there or to Entrance or Nose Creek to the south and east. Neither of those alternatives suited the Grande Cache Metis, and neither did the suggestion of Dr. Cross, the Minister of Health and Welfare, that they select a settlement area north of the 16th township, somewhere between Kakwa River and Grande Prairie. The Metis felt that this area was unsuitable for grazing their cattle and horses.[9]

Documentation on subsequent events is lacking but it is obvious that ultimately the natives did not have to move. However, neither did the natives receive a land settlement in the area in which they were living. Further representations in the 1950's as to their need for land were met by the government with suggestions that they move onto one of the Settlements. The nearest one was East Prairie and this would have meant a move of over 200 miles via Grande Prairie. The population of the Grande Cache area steadfastly refused to leave. In the early 60's the Honourable Norman Willmore, the Minister of Lands and Forests, reserved land for the settlers at Muskeg.[10]

In the first half of the century these people were supported by a very traditional native economy. During the winter, families worked traplines and hunted. At one time they travelled quite widely between Grande Prairie and Entrance depending on the location of the game and fur. Later, with the registration of traplines in the 1930's and the construction of log cabins on the trapline and elsewhere, the movement of the Metis in the winter became much more circumscribed. In spring, the families moved to a central meeting place, (e.g. Entrance) to sell their furs. Group camps were then established at favorite hay meadows such as the areas where the settlements are now. The women prepared hides and made clothes. Some fields were cultivated at this time. In late July, the families packed up and made the pilgrimage to Lac Ste. Anne. This was a time to visit relatives or receive religious instruction. The families generally returned after a month or so and preparations began for the winter. Meat and berries were dried and trapping cabins stocked. At this time the men also undertook any guiding or outfitting. Thus the traditional patterns of land use among the Metis involved, not intensive exploitation of and occupation at any one area, but a seasonal utilization of large areas. However, the hay meadows were at the core of this economy as these were the areas that the horses grazed (see Fig. 7.2 and 7.3 for photographs of the hay meadows in the early 1900's).

Through the 1940's and 50's, contact increased with the European world. A road was built from Entrance to Muskeg in the mid-40's by an oil company and a forestry station was established there in '56. In 1958, both a school and a church were built at Muskeg and this area became the focus of summer residence for most of the natives. Wage labour took the form of summer employment with sawmills, the Forestry

Fig. 7.3 Windiandy Flats, Muskeg River, Alberta Public Archives of Canada

Service, surveyors, etc. and the fall employment of guiding and outfitting continued.

Employers generally characterized the native workers as reliable, independent and highly productive. As was the traditional practice, the natives handled their increasing contact with the outside world by working through "patrons" in the form of outfitters, storekeepers, rangers and priests. These people wrote letters, provided transportation and credit, arranged for employment and interceded with local officials on behalf of the natives. Thus the impact of the larger and vastly different social system in which the Metis formed an enclave was greatly reduced. The natives persisted in a lifestyle which they perceived as essentially traditional and in an economy at which they were very successful.[11]

THE NEW TOWN: INITIAL ECONOMIC AND SOCIAL IMPACTS

However, this isolation was not to last and the larger social system broke in on the Grande Cache world with a force from which no number of patrons could shield the Metis. These events have been exhaustively documented in a doctoral dissertation by B. Morrison.[12]

Geologists had been interested in the coal deposits in this area since the 1920's. At various times groups interested in resource development had considered railroad construction into this area and the exploitation of the coal and gypsum deposits. Nothing had come of these plans up until the 1960's. In 1962 McIntyre Porcupine Mines purchased the Grande Cache coal leases and began negotiations with Japanese interests for the sale of coal. These were delayed until 1965 when the announced plans for the Alberta Resources Railway ensured efficient transport of the coal to the West Coast. The signing of the coal contracts with the Japanese and the beginning of mining on the Smokey River meant that a new town would be required for the miners and the service personnel.

McIntyre-Porcupine was not interested in creating a company town although they contributed heavily towards what they perceived as priorities, i.e., a hospital and a recreational arena. The town itself, however, was created under the New Town Act which had previously established towns at other new resource centres in Alberta such as Rainbow Lake and Fort McMurray. Under the New Town Act, a Board of Administration appointed by the Minister of Municipal Affairs would manage the affairs of a New Town until the citizens were capable of doing so themselves. One of the advantages of this structure was that a New Town would be well-planned rather than just spring up in an unorganized fashion.[13]

In August of 1966 a study group commissioned by the Provincial Planning Board presented its report recommending the establishment

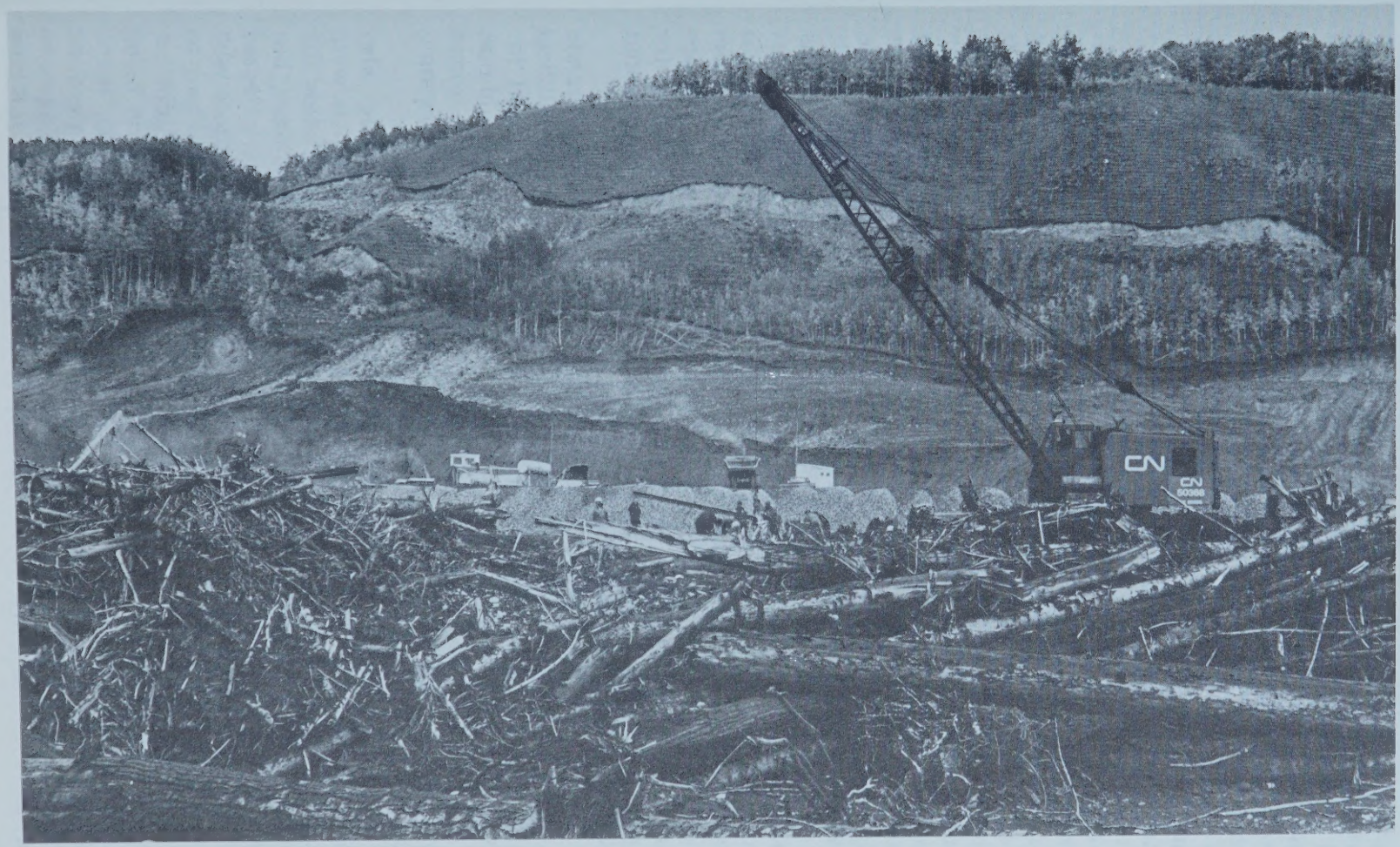

Fig. 7.4 Civilization comes to Grande Cache. Provincial Archives of Alberta

of the New Town as of September 1, 1966 and the appointment of a Board of Administration. Secondary industries such as timber, gypsum and tourism were discussed. A number of potential townsites were mentioned but only one was recommended (Figure 7.1). During this initial planning process the desires and needs of the original settlers were neither consulted nor considered. The concern of the government was reserved for the aspects of the New Town which would ultimately contribute towards good coal production i.e., good housing and recreational facilities to help promote a stable work force. In 1969, construction on the New Town began.[14]

The impact of these industrial developments on the natural resources from which the Metis made their livelihood was immediate and devastating (see Figures 7.4 and 7.5).[15] The Alberta Resources Railway ran through the middle of one family's horse meadow. Quarrying operations to provide gravel for the track bed destroyed much of the pasture and even altered drainage patterns so that in later years flooding became a problem. The mine itself was constructed on an important wintering site for horses and it blocked routes to major guiding and trapping areas. Coal dust blanketed the vegetation in the area and coal effluent released into the Smokey River made water unfit for drinking downstream. The proximity of the New Town to the Metis settlement at Victor Lake also caused many problems. The town was constructed on a traditional elk-hunting area and interfered with two major traplines. Soil for landscaping in the town was removed from meadows that were used to graze horses near the settlement. The airport was constructed on one of their large hay meadows. Clearing for gaslines and the quarrying of gravel pits were both carried out without permission near Metis settlements.

The destruction of hay meadows struck at the core of the Grande Cache Metis subsistence: horses. Horses were required for guiding/outfitting activities; they had been the major means of transport for people and goods; and they were the major prestige item. In addition to the destruction of areas necessary for their maintenance, horses were killed by trains, by vehicles on the road and through indiscriminate shooting by Euro-Canadians.

Other aspects of the traditional Metis livelihood were also changing. Although in the area as a whole, some game animals were not adversely affected by the development, the moose population did seem to decrease. Other species did not decrease in number, but altered their ranges to avoid the town area. This, of course, affected the native people's attempts to obtain game, particularly for those who combined hunting with full-time wage labour and therefore had to remain near town. Morrison's 1977 analysis of the Grande Cache example of social change emphasizes that although a fairly good living could still be obtained in the area from traditional pursuits, many natives were so horrified by the destruction they saw going on around them that they simply resigned themselves to having to find wage employment.[16] The entry of the natives into the workplace full-time

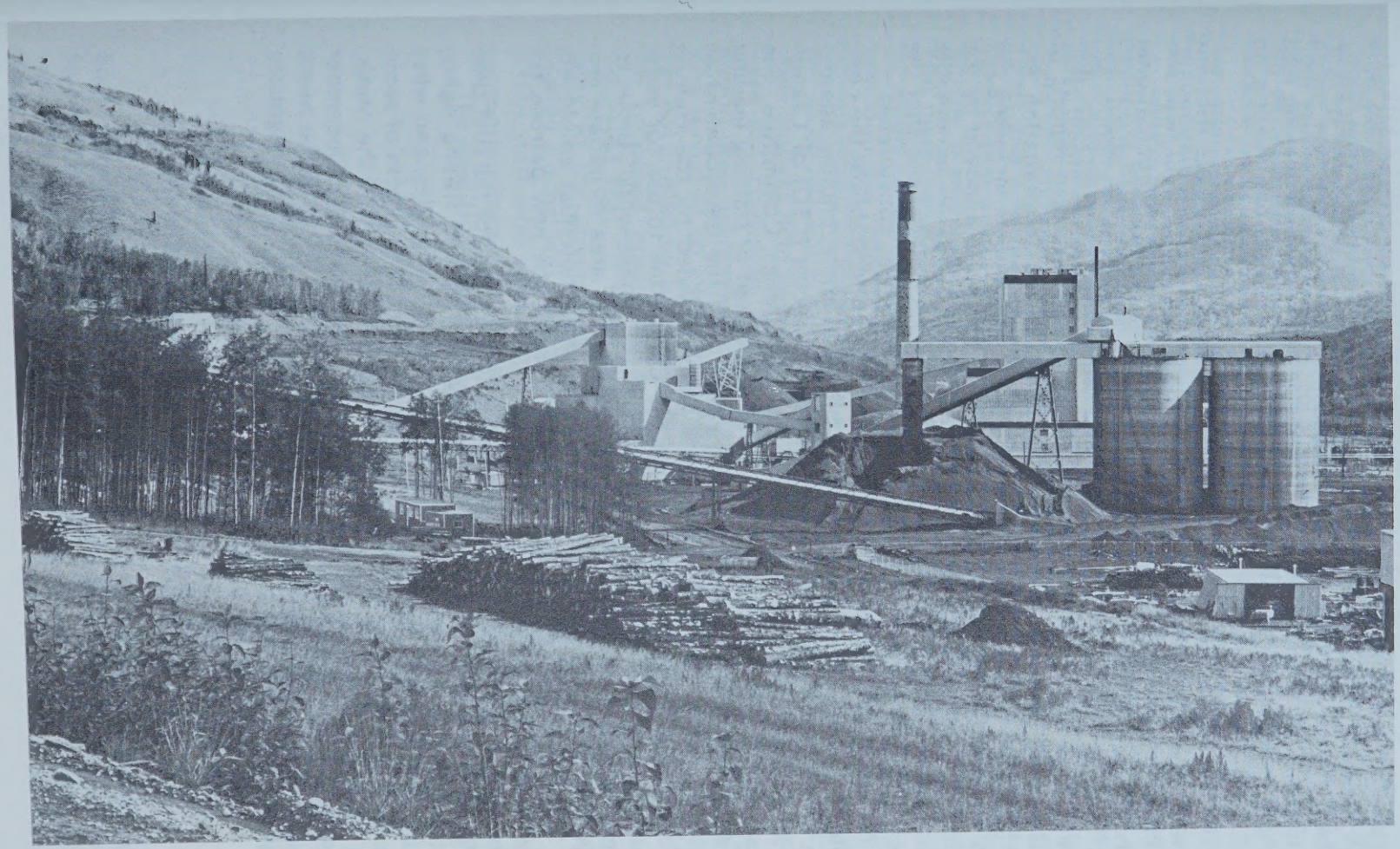

Fig 7.5 The Mine at Grande Cache. Provincial Archives of Alberta

engendered a whole new set of problems of which the major ones were their lack of English and their use of conflict-avoidance strategems. Reluctance on the part of natives to confront employers over unfair conditions or to ask for time off resulted in natives simply leaving jobs without telling their employer. This situation created bad feeling on both sides.

In addition to these socio-economic problems, there were frictions between the townspeople and the Metis over the use of land near settlements and over free-ranging horses. The Metis found the recreational activities of the whites offensive: picnickers left garbage about and left fires burning; they were noisy and frequently their pickups and motorcycles tore up sod on the meadows; there were also reports of indiscriminate shooting around the Metis settlements. In retaliation, the Metis began fencing off the areas around the settlements including the only access to the lake. The townspeople, in turn, were annoyed by the number of free-ranging horses who found their lawns an acceptable substitute for the ruined hay meadows. The Metis pointed out that the horses had only become a problem when the town was constructed.[17]

The social services which had been introduced to stabilize the coal-mining population were used to effect the social and economic adaptation of the Metis. The Community Services Director (CSD) of Grande Cache formed a Native Employment Opportunities Committee, the purpose of which was to promote labour placement or training leading towards employment and to provide support for the development of native economic independence. Funds were provided by the Human Resources Development Authority for the Committee to use for vocational training and leadership training and for "make-work" projects. Human Resources officers (HRO) were used in the area to initiate employment projects and to act as liaison between potential employers and employees. The CSD and the HRO's became the new patrons for many natives.[18]

In 1969 government and native representatives met for the first time to discuss a number of concerns including hunting and fishing rights, matters to do with the licensing and job conditions of guides, and what the Victor Lake Metis felt to be a priority, the transfer to them of some twenty-six square miles of land. In subsequent meetings of the Metis, land emerged as the major issue they wished to address. In December of 1969, the people decided that they would form a local of the Metis Association of Alberta and use this organization to help them negotiate for a land grant.[19]

LAND NEGOTIATIONS

In 1970 negotiations over land began in earnest. In March, land tenure proposals were made to representatives of the Department of Lands and Forests by the people of the Muskeg settlement. In May, the Minister Donovan Ross, responded that the Department was prepared

to offer a five-year rent-free miscellaneous lease on a half-section, provided that the settlement was incorporated and provided that the lease was to be used only for residential purposes. The Department of Lands and Forests was also ready to offer free grazing on adjacent lands for up to 60 horses, provided that all were properly branded and identifiable as belonging to the Muskeg group. The Metis rejected this offer, arguing that the terms of the lease offered little security and were inadequate for their needs.[20]

During the summer of 1970, HRDA and MAA staff began meeting regularly with the Metis settlers to discuss their adjustment to the new surroundings, and the land tenure question. In July, the Metis requested land tenure for all the settlements by making application to the Department of Lands and Forests for some 22,000 acres with full proprietory rights and a further 26,000 acres for grazing.[21] In response, Lands and Forests sent a fact-finding team comprising two of their own representatives, a representative from Municipal Affairs, and two HRDA staff. This team, called the Grande Cache Land Tenure Committee, submitted its report on September 11, 1970. It is obvious from the statements contained in this report that credibility for any spokesperson for the local natives would be something of a problem. Certain individuals who were felt to be influential in the Metis request for tenure were criticized and their motives held to be suspect. For a variety of reasons, these people were not consulted by the Land Tenure Committee. However, the Report does acknowledge its debt to the HRDA representative, a Metis who served as an interpreter. Although he was not a local and in fact, was not trusted by the locals, the Committee accepted his opinion that the proposed areas and conditions of land tenure were fair and suggested that "if these proposals and recommendations are acceptable to the government, their acceptance by the Metis people of Grande Cache will depend upon and require strong support by the HRDA staff who work in the area."[22] This is a direct reference to the appropriate means of channelling government influence.

The specific recommendations of the Committee were as follows:[23]

1. Land tenure of 2335 acres would be a realistic free grant but with a sell-back agreement.

2. The land would be held by incorporated co-ops or associations; these would be organized by the HRDA staff; there were to be no individual allocations save in the instance of H. Joachim. The three families from Grande Cache Lake would be expected to relocate to either Victor Lake or Susa Creek.

3. Once incorporated, individuals would not be allowed to relocate, save by permission of the co-operative to which they wanted to move.

4. The land grant would be used by the natives for residences, gardens, grazing and any legitimate business enterprises of their own. Further land could be obtained through lease upon the presentation of an economic development proposal. Renting of any any of the land grant to outside concerns had to be approved by the Minister of the Department of Lands and Forests.

5. Natives should be exempt from the payment of taxes for five years. To implement this, a new Sub-section should be added to the Municipal Taxation Act dealing specifically with leases from the Crown to individuals of native ancestry.

6. Compensation should be awarded for damages to this lease because of industrial activity.

7. The HRDA staff should be used to organize the natives to supply free labour for survey-work and line-cutting.

8. A maximum number of horses permitted would be determined and supervised by the officials of the Fish and Game Branch. These horses could be grazed on Crown land free of charge for the first five years, at half-rates for the following five years, and thereafter at full rates.

9. The operation of guiding, outfitting, and trail-riding businesses should be encouraged.

The HRO went ahead with the incorporation of four co-operatives (Wanyandie, Muskeg Seepee, Susa and Victor Lake) under the Co-operative Association Act. The stated objective of these were "to act as agents on behalf of its members in administration of land turned over to the Co-operative by the Land Tenure Committee of the Alberta Government."[24] The natives had not wanted individual ownership of land and it was suggested that their traditional concept of communal ownership was best fitted to a co-operative structure. However, many of the Lands and Forests Committee's recommendations and their implementation were unacceptable to the Grande Cache Metis so they authorized their lawyer, Philip Ketchum of the law firm of Crockett, Hattersley, Ketchum and Niziol to initiate proceedings for a land claim.

In addition, the local Metis were increasingly dissatisfied with their representation by the HRO and by the MAA field-workers. The report of the Lands and Forest committee on the land tenure question had certainly indicated the government's reluctance to acknowledge as

spokespeople those individuals who were strongly allied with the local Metis. The Metis held the HRO suspect as a government employee and it was felt that the MAA representative was more interested in justifying his paid position by appearing to be the individual through whom negotiations and concessions must flow than in really contributing to the improvement of the situation for the local Metis. In other words, they felt that these people were eager to receive the benefits of being "patrons" but without producing any results for their "clients." In May of 1971 the Grande Cache Metis decided to avoid the whole patronage structure for the land negotiation and to represent themselves. This was accomplished by the formation of the Native Area Development Committee (NADC) comprising representation from each settlement. From within that group was elected an executive[25] consisting of Allen Joachim, Kelly Joachim, Abe Desjarlais and Ernie Delorme. Legal Counsel was responsible to the NADC and after two months of discussion on a compromise land settlement such a solution was presented for the consideration of J. Donovan Ross, the Minister of Lands and Forests.

The terms of the compromise solution offered by the NADC were as follows:[26]

1. Land tenure of 5,540 acres was represented as a more reasonable grant in light of the people's long occupation of the area. It was agreed that the title should be subject to a sell-back agreement but the suggestion that the value be determined by appraisers of the Department of Lands and Forests be rejected. Instead, if agreement over the value could not be reached, appraisers would be appointed under the terms of the *Arbitration Act* of Alberta.

2. It was agreed that the land should be held by groups organized into co-operatives, namely the Wanyandie, Joachim, Victor Lake, Grande Cache, Susa Creek and Muskeg co-ops. The allotments were re-worked so that there was not need for relocation of families. The actual tracts of land were chosen on the basis of recommendations made by an economic feasibility study contracted for by the CDS.

3. It was argued that the tax holiday period should be extended to 30 years since the adjustment to a new way of life including the obtaining of enough revenue from the land to pay property taxes could not be accomplished in less time.

4. It was agreed that the land in question could only be leased with the approval of the Minister of Lands

and Forests, provided that this restriction be limited to a 30 year period, and that it be tied to the tax holiday so that if the province were later to refuse its commitment on tax exemption, the restriction would become null and void.

5. The grazing rights suggested by the government were acceptable and it was suggested that the hunting rights previously defined, i.e. the right to hunt out of season for food for domestic consumption, apply to all members of the co-operatives and be continued for the 30 year transition period.

6. It was agreed that individuals should receive compensation for the inroads made on their leases through the installation of the services for the new town and the new mine. These general areas of compensation involved easements for power and gas lines, railway and road right-of-ways and top soil removal. Specifics were detailed for each co-operative and specific individuals were to be compensated for loss of income on their traplines due to urbanization and industrialization in the immediate vicinity.

7. Timber permits for domestic and cottage-industry use were to be made available in adjacent areas under normal miscellaneous permit terms.

8. It was suggested that natives be granted exclusive rights to guiding in the area and that grants be made for capital expenses to establish outfitters.

The major difference between this proposal and the one made earlier by the government was in the amount of land to be awarded. The other terms involved extensions for certain concessions already offered by the government and the more specific delineation of points raised by the government. Ketchum argued that under English common-law and as had been incorporated into Alberta law, the Grande Cache natives had satisfied the requirements for a claim to heritage possession of land, i.e. they had held exclusive possession for over 60 years and had every intention of further occupying that land. In addition, Ketchum reasoned that the Crown had recognized these rights in the past, as evidenced through their willingness to compensate the Metis for their removal from Jasper Park; their promise of land elsewhere; their decision in 1917 to let the Metis remain, despite the creation of the Athabasca Forest Reserve; through subsequent census tallies and even in the 1970 report by the Land Tenure Committee of

the Department of Lands and Forests. Given the size of the revenues generated from the area and the fact that this was done at the expense of the Metis way of life and economic independence, Ketchum argued that to agree to this compromise solution would be the just and honourable action.

The government was asked to decide before August 15th, 1971, whether they would accept, first, the compromise land claim and the type of title to be issued and, secondly, the compensation claim in principle but subject to negotiation on the amounts to be awarded un-under each item.[27]

Unfortunately, in August a provincial election was called and the government changed. With the entry of the Conservative government into the negotiations, all efforts for a speedy resolution of the native land claims were abandoned. At a time when the natives felt that immediate title to their land was crucial to proceeding with the economic development plans, the government, reluctant to set a precedent, was moving very slowly. Talks between counsel and the government dragged on into early 1972. The threat of a caveat[28] against the land resulted in a verbal proposal made by Dr. A. Warrack, the new Minister of Lands and Forests. It appears to have offered the following:[29]

1. a land grant of 4150 acres under the same conditions as before but with rejection of the proposed 30 year tax holiday period and rejection of the tying together of tax holiday and the proposed title restriction

2. a commitment to give effect to the NADC's recommendations concerning hunting rights, guiding and outfitting licenses and timber permits, as far as the Department was able

3. a rejection of the tentative offer made by the previous government and proposed again by the NADC to give cash compensation for damages to land. Award for damages to income sustained through the processes of urbanization and industrialization were under further investigation.

The government's position on the matter of cash compensation was that they had no obligation to make awards for invasion of property before title was issued. This was in conflict with the NADC's view that the natives were the owners of the land on the basis of the length of their occupation and were entitled to compensation.

In March of 1972, Ketchum presented the NADC's reaction to these offers:[30]

1. Most of the Co-ops reluctantly accepted the government's offer in terms of the actual land. Three

requested fencing on the road allowance through their land to discourage trespassers. One requested a minor enlargement of the area.

2. The Grande Cache Lake group did not accept the deletion of the Joachim homestead on the lake frontage from their claimed area. They warned that if this were done, they would demand $4,000.00 compensation.

3. The NADC again urged the tying of the restriction on freehold title to the tax holiday period.

4. Membership in the Co-op was defined in a more restricted way to the original members and their descendants and these who joined their families by marriage or adoption. The government was also advised of certain changes in the list of individuals for each co-op.

5. The proposal to give no cash compensation was rejected. All Co-ops were willing to waive claims that related to gravel taken and to payment for easements for power and gas lines. However, the Joachim group still demanded cash compensation of a minimum of $1,000.00 for topsoil that had been taken from the area. In addition, the four holders of the registered traplines whose economic value was decreased demanded $3,000.00 compensation in total for loss of earning power.

Ketchum argued that the proposed deletion of the Joachim homestead from the Grande Cache Lake area struck at the very basis of the native land claim, that is, that the townsites and surrounding lands be recognized as belonging to the persons who historically lived there and every attempt be made to enable the native people to become economically viable in the new society in which they found themselves. He pointed out that the homestead was built in the early 1900's and had been steadily occupied from that time. In addition, it was an area that had been recommended by a consultant as prime land for the development of the campground that Milton Joachim planned. He attacked the submission of McIntyre Porcupine Mines Limited that the land be turned over for the benefit of the townspeople by pointing out that these generous views concerning other people's land were not held by the Chamber of Commerce and the Town Development Officer in Grande Cache, both of whom approved Joachim's proposal to develop that area for a campground. Ketchum further reasoned that this case

was covered by English law in that usufructuary title obtained by communal occupation could not be extinguished by Crown grant, for example, by transfer of the land by the Federal to the Provincial Crown as occurred in 1930 or by any other alienation from the Crown. In addition, common law requires that where any person at any time has made improvements on land in the belief that the land was his own and where the owner of the land is aware of the occupancy and the improvements, the occupant is entitled to compensation for the improvements or to ownership, as is appropriate.[31]

This appeal to the government received no formal response for several months although Mr. Henry Woo, executive assistant to the Minister of Northern Development, promised that settlement was imminent, while on a visit to the area in April. In mid-May, Allen Joachim, the President of the NADC, wrote to the Minister of Northern Development, Allan Adair, explaining the urgency of the situation. He pointed out that the people were losing faith in the government and that, if tenure were not settled, it would soon be too late to start any of the local development projects slated for that year.[32] By mid-July, of 1972, with the aid of Adair, agreement appeared to have been reached on the land question. Each native settlement had agreed to the terms, with the exception of Grande Cache Lake.[33] The latter did not feel that they had been awarded sufficient waterfront land for resort development, a stand that was later substantiated by a consultant's study.

Although these agreements were reached in 1972, their actual signing was delayed until May, 1973 for four of the groups and until January of 1975 for Grande Cache Lake and Joachim (see Appendix 7 for an example of an agreement). There were a number of reasons for this delay. On the native side of the negotiations; 1. the co-operatives for Wanyandie, Muskeg Seepee, Susa and Victor Lake had to be reorganized since the agreements called for certain entrenched provisions;[34] 2. a second legal structure, limited partnerships, had to be formed for Joachim and Grande Cache Lake. Joachim had too few people for a co-operative and Grande Cache Lake was to be an experiment to see whether a limited partnership would prove a better legal structure than the co-operatives for these natives. The limited partnership comprises a general partner who works on behalf of the group but within defined limits and always subject to an accounting to the group or removal by majority vote of the group;[35] and 3. Grande Cache Lake, on a recreational consultant's advice, decided to trade part of their land for another piece of waterfrontage that could be more easily developed.[36]

On the government's side: 1. there were delays in accomplishing the surveying. There was debate over whether it should be done by a private or a government survey team. When the survey was finished, it was discovered that the survey plans did not reflect the trade in land for Grande Cache Lake Enterprises;[37] 2. the Department of Northern Development apparently kept losing the supporting documents for the land switch at Grande Cache Lake. Furthermore, although the land

switch had been unconditionally agreed to, afterwards the Department of Northern Development wanted the settlement to concede road allowances and an additional section of lakeshore to allow for expanded public access;[38] and 3. negotiations over compensation were at a standstill. The outstanding claim were those of Joachim for topsoil removal and those of four trappers for losses sustained to their trapping revenues.[39]

Ketchum argued that the granting of a trapline certificate meant that the government was granting a profit *a prendre* to the holder of the certificate, or a right to take something off another's land. During the period specified, the holder has an absolute right to the rights granted under the certificate and thus can maintain an action for interference with this right even against the owner of the remaining interest on that land. In response to the government's statement that the holders of the traplines had earned more per annum since the 1968/9 trapping season, Ketchum argued that this rise in income represented a marked increase in price per animal, but that, nevertheless, there had been a decrease in the number of animals per se.[40] This point of compensation for losses on the trapline was never resolved.

The final land tenure ceremonies were held on January 6, 1975. By this time the natives of Grande Cache were disillusioned in the government, in the NADC and in themselves as well, and few of them actually attended the ceremony.[41]

ECONOMIC DEVELOPMENT

Intertwined with the process of land negotiation was the whole issue of economic development. Since there was no question of there remaining land unaltered by industrial impact on which traditional economic activities could be pursued, the natives approached with great enthusiasm the question of their own economic development within the context of the local economy. The involvement of the larger community in the natives' future economic plans did in fact later serve to help expedite the land claim. This involvement was first promoted by the establishment of the NADC in 1971 which was a visible sign of native determination to work for their own future.

Inevitably, after the formation of the NADC, a number of matters other than the land claim began to be channelled through it. Local problems involving the number of free-ranging horses, the bussing of Metis school-children, school absenteeism, and trespass by Euro-Canadians began to come under their purview. Too, the process of urbanization continued to have an impact on the environment: the highway constructed in 1971 cut through homesites at Susa and seriously affected water sources at Muskeg.[42] Also the Town of Grande Cache took its water from Victor Lake. The subsequent sharp drop in water level was making it difficult for that settlement to obtain water.[43] In addition, the Committee expended a great amount of time and effort in establishing

their legitimacy as spokesperson for the local Metis. This involved weekly meetings with government officials, public appearances and never-ending competition with the MAA representatives who sought to channel funding and service through the MAA to substantiate their own poisition as "patrol". Fortunately for the NADC, in this latter question, they were supported by the CSD of the town of Grande Cache.[44]

As a result of negotiations over local problems and public meetings, considerable rapport began to develop between the NADC and the local officials. This in itself was a tribute to the Committee members' determination to meet the new role demands of leadership and negotiation in a Euro-Canadian milieu. They had to overcome noncompetency in English and their own cultural emphasis on confrontation avoidance. The meeting ground of the native and white local leaders proved to lie in the potential for co-operative economic development. In both these areas of leadership training and development planning, the Committee was assisted by two advisors, one an HRDA representative from Edmonton and the other an anthropologist from the University of Alberta. Together with the Committee these advisors put together a brief[45] proposing a unified program of local development. By "unified", they meant that the local development process would be participated in by both natives and non-natives. In the past the native community was often effectively isolated from the local community when it came to planned economic development. This occurred because the government acted to direct the native development itself, an initiative that also meant government desires and plans were substituted for those of the natives. In the strategy proposed by the NADC brief, the government would act merely in a resource role. It would provide a supportive public policy, resource personnel on a local request basis, and financial resources. The native community would assess its own needs and determine its own goals in relation to local and regional development. Managerial and technical support would be drawn as much as possible from the local community to foster the involvement of the native community in the normal networks of social relations in the local white community.

The proposal identified two major obstacles to develop in the Grande Cache area: the unsettled land claim and certain conflicts in the roles of various government and private agencies. The uncertainty of the land settlement was seen as undermining the peoples' trust in the government and as undermining the goodwill that existed between the native and the local white community. Land which had been intended for co-operative development for economic and recreational purposes was being held in a limbo while under legal negotiation. A speedy and just resolution was urged. To avoid the conflicts between different agencies, it was proposed that the CSD be recognized as the primary government resource person for the Area Committee. He would assist the local people in finding any other resource personnel that they required. This brief proceeded to outline a number of development opportunities in which the people were interested in-

cluding tourist recreational facilities and services, logging, market gardening, ranching and leather workshops.

Seven steps were perceived as necessary to creating the structure whereby this plan for local development could be achieved:

1. Immediate and equitable settlement of land under tenure negotiations with compensation for destruction and use of some of the areas.

2. Funding to expand the role of the Native Employment Committee so that they could support leadership and employment training and literacy programs.

3. The engagement of a non-government development research team to provide a) leadership training for the NADC including individual language tutoring, business meeting simulations, the positive handling of conflict situations; b) workshops and other advisory services to establish basic structures for private sector/native involvement in various projects; c) training and supervision of cultural brokers who would work directly with native entrepreneurs and businessmen; d) trouble-shooting and liaison when communication breaks down between the various participants; and e) ongoing research and evaluation of the total development scheme.

4. The training of the Metis Association fieldworkers as cultural brokers. These are persons who establish avenues of communication between two cultures. They can communicate the traditions and values of both cultures.

5. Construction and opening of the Native Development Center which would provide a literacy program, an appropriate range of vocational subjects, and a meeting place for the native community.

6. Recognition by all government agencies of the primary directive role that the Native Area Committee played in the development of the native community and a willingness to restrict their own activities to the guidelines established here.

7. Recognition by the government, the private sector, and the native community that the program suggested would be long-term, with consistent gradual progress. Revision and change, however, would be incorporated as evaluation and analysis dictated.

Two things, however, retarded the implementation of the proposal: delays in both the settlement of the land tenure question and the allocation of development funds. The events revolving around the latter are well-documented by Morrison.[46] In April of 1972, the people of Grande Cache were heartened by the visit of the executive assistant to the Minister of Northern Development. He expressed the government's faith in "this fine example of responsible local government" and pledged the government's full support for their activities. He suggested that the NADC present the government with a concrete development scheme, not merely a philosophical treatise on development.

A preliminary proposal was presented in May and followed by a detailed proposal in July for funds for clearing and seeding areas of horse pasture as a first step in rebuilding the outfitting and guiding industry. The government responded by informing the NADC that a proposal must contain such things as man-hours of labour and costs of materials. The NADC were confused since their proposal had, in fact, contained these items. The government then suggested that a feasibility study was required since the native land areas were insufficient for a cattle industry. The NADC responded that their current plans did not include a cattle industry. In August the government informed them that the best way to obtain funds would be to request money on the basis of co-operatives. The NADC were against the idea of co-operatives, but they were reassured that it would not require the creation of special co-operatives, since it was just a format. After much debate the NADC decided to rewrite and submit their proposals to the Cooperatives Branch, but sometime later they were informed that they were ineligible for a Cooperatives Branch loan until the cooperatives in the area had been duly constituted by a member of the Branch and until a suitable agricultural study had been done. By this time, of course, the NADC was thoroughly frustrated and, more critically, relations with the town began to falter, as the native community no longer appeared as if they would be able to be equal partners with the town in local development. In addition, there was another outbreak of local problems concerning the number of free-ranging horses and school absenteeism.

In October of 1972, the development consultant of the NADC collected this exchange of correspondence and sent copies to the Minister of Northern Development asking why, despite all the promises, economic support had not been forthcoming. In addition a copy was also sent to the Premier. Shortly thereafter, the Minister's executive assistant responded that an initial "seed grant" of $20,000 was to be given to the NADC and meetings would ensue to discuss further long-term funding. Soon after the NADC requested further funding for the writing of a master plan integrating their development plans with fiscal and planning realities. This idea was supported by several ministers in order to justify expenditure of funds; it was initially approved and then denied. The reason given was that the NADC had just received the $20,000.00.

Meanwhile the NADC had approached the town council and the Chamber of Commerce with a proposal to undertake a joint study of tourism in the area. A proposal was made to the Minister of Northern Development and the local MLA who was also Minister of Tourism. In January the MLA announced the study would be funded by the two Departments but before the study could begin, the mine decided to lay off 100 miners and close one of the mines. Following this, the MLA reported that they had decided to delay the funding of the study for political reasons.

The closing of the mine and the lay-off of workers came as a surprise to local community and government alike. This particular case neatly exemplifies why natives are reluctant to accept the assurances of government and big business that employment generated by natural resource development will compensate for the loss of subsistence through the destruction of the environment. The opportunity for employment for a local population depends on the site of development and, in turn the site of development depends on outside forces such as world markets. The site of development and thus potential employment can change rapidly, leaving a local native group with nothing other than a much-disrupted environment. In this case the government responded to the lay-off by appointing a Public Commission directed by Mr. N. R. Crump to investigate both the lay-off and general conditions at Grande Cache. The Crump Commission heard evidence from a number of local groups and was highly impressed with the submissions from the NADC. The Report, released in September of 1973, expressed its support for the NADC's economic development plans and recommended continuous development funding for a period of five years.[47]

Nevertheless, subsequent funding by the government followed a familiar path. Funds were not awarded for any period over a year on the basis that this would be unfair to other native organizations. Moreover the $20,000 which had originally been described as a "seed grant" became the basis of a "core-funding" budget. This meant that increases or decreases in the funding were calculated, depending solely on whether *administrative* costs had increased or decreased. Thus, funds for non-administrative expenses, such as a development program, were to be awarded on a project-by-project basis. This made it extremely difficult to carry out long-term planning. Similar policies in dealing with Treaty Indian funding are outlined by Ponting and Gibbins[48] in their discussion of the means by which government maintains socio-fiscal control over Indians.

Furthermore, the government did not award funds for any large development projects and even for small projects such as clearing and seeding which were seasonal, there were delays until it was not feasible to do the work that year. Nonetheless, verbal support was still given for development as a whole. The result of all this was that the NADC rapidly lost credibility with the local community, both white and native. It was obvious to the locals that NADC received money and had set up an administrative apparatus, but they did not see any further

progress being made in the development plans. On the contrary, the native contribution to the local economy decreased as alcoholism and work absenteeism began to increase. In 1976 the NADC closed down.

CURRENT SITUATION

At present, the natives of Grande Cache have very little to show for their previous efforts. Wage employment is not an adequate subsistence source. Income generated by the land they hold title to is still very small, consisting of monies from the sale of sand or gravel or from leases for pasture. One native-owned logging company, Mihti Contractors, is in the initial stages of development but again lacks any significant funding.[49]

Not only have the economic development plans of the NADC fallen by the wayside but some of the settlements have been in danger of losing their land altogether through non-payment of taxes. Part of this came about through a failure to re-negotiate the tax-free period into the second five years mentioned in the agreements, a failure directly related to the collapse of the central political institution, the NADC. Furthermore, problems have arisen through the lack of maintenance of the co-operative structure. These really exist in name only and the requirements of the Co-operative Branch i.e. annual meeting, board of directors, audit and reports on all of these have not been met most of the time. On the whole, the limited partnerships do seem to have worked more efficiently. There is now talk within the government of dividing up the land into individual allocations.[50]

One result of the events of the past six years has been the realization by the natives that they really do need to maintain a central committee and there are plans to institute one similar to the defunct NADC. The re-negotiation of the tax-free holiday and the improvement of relationships with the town will be their first goals.[51]

SUMMARY

Although the Grande Cache land settlement may have been hailed as a first for the Metis of Alberta in that land on which Metis were residing was granted outright rather than merely on a long-term lease, it is obvious that the failure of the government to provide funds for economic development renders it little better than the "planned failure" of St. Paul des Metis. Particularly damaging has been the form this failure took: government representatives consistently made verbal promises of support, but rarely followed through. This sabotaged native morale as well as the relationship between the native and the Euro-Canadian communities. The lack of a balanced program of land tenure and economic development raises the possiblity of the Metis losing

their land for ever. It remains to be seen whether the extraordinary determination of the Grande Cache natives will surface again to overcome this threat.

ACKNOWLEDGMENTS

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8
THE BASIS OF A CLAIM

In a report from the Indian Claims Commission, written in 1975, it was recognized that there were at least three possible categories of Metis claims which would eventually have to be considered: 1) claims that land and scrip issues were unjustly and inefficiently administered; 2) the claim that scrip as a form of compensation was inadequate to extinguish the aboriginal title enjoyed by the Metis community (some treaty groups have made similar claims, stating that their treaties were an imposed settlement which was unfair by reason of insufficient compensation) and 3) that Metis are Indians under the terms of the *British North America Act*, if not the *Indian Act*, and are therefore entitled to special consideration from the federal government.[1]

Soon after beginning their research, the various Metis associations of the prairie provinces found several other aspects to add to their overall claim. There was evidence of widespread fraud in locating scrip (which in some cases may have prevented some Metis' aboriginal rights from being lawfully extinguished); there was evidence that the federal government actively encouraged speculation; political rights other than land rights of the Metis were ignored; and in general there was much evidence that the method chosen for allocation of land was designed more for the benefit of the government's policy of land settlement and development, rather than for the benefit of the Metis.

The bases of the Metis' claim in Alberta may be summarized as follows.

1. THERE ARE MANY LEGAL DOCUMENTS WHICH RECOGNIZE THE ABORIGINAL RIGHTS OF THE METIS.

2. THE HUMAN RIGHTS OF THE METIS WERE VIOLATED.

3. THE LAND PROGRAMME WAS DESIGNED TO BENEFIT SPECULATORS, NOT THE METIS.

4. THE GOVERNMENT OF CANADA WAS GUILTY OF *A BREACH OF TRUST* WITH THE METIS.

1. THE EVIDENCE OF SUPPORTING LEGAL DOCUMENTS

a. There are many documents, but the most important are probably the *Manitoba Act* of 1870 and the various versions of the *Dominion Lands Act* (see Appendices 1 and 3). Both these documents recognize that the Metis or Half-breeds share in the "Indian Title" to the land, and acknowledge the obligation of the Crown to settle these land claims.

b. The land claims research has clearly demonstrated that Canada continually ignored the obligations stated in its own legal documents with respect to Metis people. *The Manitoba Act* provided for the allotment of 1,400,000 acres to the Half-breed residents of the province, but this was handled in a totally unjust and illegal manner.[2] Various Dominion Lands Acts, beginning in 1879 extended federal recognition of Metis aboriginal title into what is today northern Manitoba, and all of Saskatchewan, Alberta and the Northwest Territories. Section 125(e) of the 1879 Act specifically provided for *land* in satisfaction of these Metis claims (Appendix 3). The federal government, however, never made any serious attempt at ensuring that the Metis were adequately protected, or that they received adequate compensation for their Indian Title.

c. Despite the fact that these documents recognize the Metis' Indian Title, they also represent a basic curtailment of Metis rights, since the federal government did not enter into any consultation with these people. The Metis were not allowed to negotiate on their own behalf (with the exception of Manitoba); they were simply told how much land the government was going to give them, and how it was going to be distributed. This prevented the Metis from getting a settlement that was fair in terms of the market value of the land they were being forced to cede.

2. THE HUMAN AND NATIONAL RIGHTS OF THE METIS WERE VIOLATED.

a. The Canadian government refused to recognize the political and national identity of the Metis. The Metis people were a sovereign people; they had their own government, their own religious organization,

their own territorial boundaries. Thus, at the very least, *they had the right to negotiate directly with the government over their land claims* and all other aspects of Dominion take-over.

No dealings or negotiations were ever initiated with the recognized leaders of the Metis, other than in Manitoba, and the Metis' Human Rights (as defined in the Universal Charter of Human Rights, see Appendix 4) were violated.

The Metis did not consent to give up their land, nor were they ever asked.

b. The Metis' individual property (i.e. individual plots of land) were finally recognized, but only in a limited way by the scrip issue. Even this was not forthcoming until the North-West Rebellion of 1885 forced the government to act on its prior commitments. This should never have been necessary; it was a well-established principle that when territory passed from one sovereign to another, individual property rights were to be recognized.[3]

3. THE METHOD CHOSEN TO DISTRIBUTE LAND WAS DESIGNED TO BENEFIT SPECULATORS, NOT THE METIS.

a. The government knew quite well what would happen if scrip was used as the means of land distribution; there would be heavy speculation and the Metis would end up landless. The government had seen scrip programmes in operation before, in the United States, but deliberately chose to use it in Canada anyway.

b. The government openly aided land speculators, by allowing them to advertise in Dominion Lands Offices.

c. The government changed the scrip laws to aid speculators.

d. The government refused to investigate illegal and unfair scrip practices.

e. The government's main interest, as manifested in their Dominion Lands policies, was to encourage

settlement and development of the West. They deliberately sacrificed the Metis' interests to further this cause.

4. THE GOVERNMENT WAS GUILTY OF A BREACH OF TRUST.

All of the above charges show that the government was guilty of a breach of trust. The government had the responsibility of dealing fairly with the native people in their land settlements. In dealing with Treaty Indians, the government extended itself to protect the Indians' lands by making them inalienable. The government made only half-hearted attempts at providing any similar protection to the Half-breeds. In claiming sovereignty over the areas inhabited by Metis, the government of Canada made itself responsible for the welfare of the inhabitants, and in refusing to ensure justice to the Metis, failed in providing just treatment for all of its citizens.

The position of the government is that the scrip programme, despite all its faults and shortcomings, nevertheless extinguished whatever aboriginal rights the Metis may have had, since "the courts have consistently held that Parliament has the unfettered authority to extinguish aboriginal rights on *whatever basis it chooses to do so*"[4] (emphasis added). It should be noted that the government was in a position to take this stand long before any research into the scrip programme was undertaken by the Metis people, and that the main preconception of this position is that *no matter what form of injustice or even illegality was uncovered by the land claims research, nothing could change the basic fact that extinguishment was already accomplished.* On that basis, one is forced to characterize the recent support of land claims research instigated by the government as a meaningless exercise designed to temporarily mollify the Metis people.

The government's response does not take into account the fact that inadequate compensation was paid to the Metis, or that fraud and the inherent characteristics built into the administration of the scrip programme ensured that the Metis would get little or nothing for their aboriginal title. The United States has a mechanism, the Indian Claims Commission, for awarding damages to tribes for what the government admits were illegal, fraudulent or unfair appropriations of land.[5] This Commission has been criticized as having been created merely to legitimize past wrongs with money payments (the commission has no authority to return or award land), but at least some compensation is awarded for unfair practices in the past.

The Canadian government, at least as far as the Metis are concerned, seems unwilling to admit responsibility for any past injustices. They have responded to the mass of evidence collected by all three

prairie Metis associations that shows that the government actively encouraged scrip speculators by stating there is no "significant evidence" of the government "being complicit in scrip speculation".[6] This is despite the fact that the government was shown to have allowed scrip speculators to advertise in land offices, changed certain laws to abet speculation (after being pressed to do so by the speculators), recognized scrip assignments, refused to protect Half-breed minors' claims, set up scrip accounts and acted as bankers for speculators, allowed scrip to be applied to homesteads, defined certain forms of Half-breed scrip as personnal property, refused to investigate charges of fraud, and passed laws which protected certain speculators from prosecution. These may be insignificant as far as the present Minister of Justice or the current government is concerned, but not insignificant to the Metis. How can the Metis be expected to trust and work with a government which can cavalierly dismiss illegal or unjust actions of a previous administration?

The government also cites the historical evidence that shows the Metis insisted on the right to sell scrip.[7] But they can only use that fact to justify their present position of denying land claims if they pull it completely out of context. We have shown that, *by the very nature of the scrip regulations themselves*, selling scrip was often the only rational response the Metis could make to local situations. The government cannot escape all responsibility for the failure of the scrip programme, merely by pointing to the fact that many Metis insisted on the right to sell their scrip.

The government's response to the charge of a breach of trust is to deny that any relation of trusteeship exists between the Crown and native people and that this would be inconsistent with the Crown's responsibility to promote the interests of all its subjects.[8] Whether this is true or not,[9] this does not answer the point that the government made a far more concerted effort at protecting the rights of Indians, by making their lands inalienable, than they did for the Metis. How does that align itself with the government's responsibility to equally promote the interests of all its subjects?

Therefore, despite the present government's contention that "the problems (of Metis and Non-Status Indians) are not to be resolved by land claims compensation"[10] the Metis are prepared to continue this fight for recognition of past wrongs. We feel that Canada should follow the precedent of the United States in being at least willing to attempt to compensate an injured people for the lawlessness of past regimes, and be prepared to determine, in consultation with the Metis, the extent of damages suffered, what would constitute a just and equitable settlement, and a mechanism for implementing an appropriate compensation.

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7. *Ibid.*
8. *Ibid.*
9. For a discussion of whether there is a trustee relationship between the federal government and Indians or Metis, see AMNSIS, 1980, The Federal-Indigenous Trust Relationship. *In* Final Report: a Summary and Review of Research Findings Regarding the Rights and Claims of the Non-Status Indian Peoples of Saskatchewan. Regina: Association of Metis and Non-Status Indians of Saskatchewan. Appendix "B".
10. Chretien to Sinclair, *op. cit.*

APPENDICES

APPENDIX 1

THE MANITOBA ACT, 1870

33 Victoria, c.3

PROVISIONS AS TO INDIAN TITLE — GRANTS TO HALF-BREEDS

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

APPENDIX 2

METIS LIST OF RIGHTS

1. That the Territories, heretofore known as Rupert's Land and North-West, shall not enter into the Confederation of the Dominion of Canada, except as a Province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to the different Provinces of the Dominion.

2. That we have two Representatives in the Senate and four in the House of Commons of Canada, until such time as an increase of population entitle the Province to a greater representation.

3. That the Province of Assiniboia shall not be held liable, at any time, for any portion of the public debt of the Dominion contracted before the date the said Province shall have entered the Confederation, unless the said Province shall have first received from the Dominion the full amount for which the said Province is to be held liable.

4. That the sum of eighty thousand dollars ($80,000) be paid annually by the Dominion Government to the Local Legislature of this Province.

5. That all properties, rights, and privileges enjoyed by the people of this Province, up to the date of our entering into Confederation, be respected, and that the arrangement and confirmation of all customs, usages, and privileges be left exclusively to the Local Legislature.

6. That during the term of five years, the Province of Assiniboia shall not be subjected to any direct taxation except such as may be imposed by the Local Legislature for municipal or local purposes.

7. That a sum of money equal to eighty cents per head of the population of this Province be paid annually by the Canadian Government to the Local Legislature of the said Province, until such time as the said population shall have increased to six hundred thousand (600,000).

8. That the Local Legislature shall have the right to determine the qualifications of members to represent this Province in the Parliament of Canada, and the Local Legislature.

9. That, in this Province, with the exception of uncivilized and unsettled Indians, every male native citizen who has attained the age of twenty-one years, and every foreigner, being a British subject, who has attained the same age, and has resided three years in the Province, and is a householder; and every foreigner other than a British subject who has resided here during the same period, being a householder, and having taken the oath of allegiance, shall be entitled to vote at the election of members for the local Legislature and for the Canadian Parliament. It being understood that this Article be subject to amendment exclusively by the Local Legislature.

10. That the bargain of the Hudson's Bay Company with respect to the transfer of the Government of this country to the Dominion of Canada be annulled, so far as it interferes with the rights of the people of Assiniboia, and so far as it would affect our future relations with Canada.

11. That the Local Legislature of the Province of Assiniboia shall have full control over all the public lands of the Province, and the right to amend all acts or arrangements made or entered into with reference to the public lands of Rupert's Land and the North West, now called the Province of Assiniboia.

12. That the Government of Canada appoint a Commission of Engineers to explore the various districts of the Province of Assiniboia, and to lay before the Local Legislature a report of the mineral wealth of the Province within five years from the date of our entering into Confederation.

13. That treaties be concluded between Canada and the different Indian tribes of the Province of Assiniboia, by and with the advice and cooperation of the Local Legislature of this province.

14. That an uninterrupted steam communication from Lake Superior to Fort Garry be guaranteed to be completed within the space of five years.

15. That all public buildings bridges, roads, and other public works be at the cost of the Dominion Treasury.

16. That the English and French languages be common in the Courts and that all public documents as well as Acts of Legislature, be published in both languages.

17. That whereas the French and English-speaking people of Assiniboia are so equally divided as to number, yet so united in their interests and so connected by commerce, family connections, and other political and social relations, that it has happily been found impossible to bring them into hostile collision, although repeated attempts have been made by designing strangers, for reasons known to themselves, to bring about so ruinous and disastrous an event.

And whereas after all the troubles and apparent dissensions of the past, the result of misunderstanding among themselves, they have, as soon as the evil agencies referred to above were removed, become as united and friendly as ever.

Therefore as a means to strengthen this union the friendly feeling among all classes we deem it expedient and advisable—That the Lieutenant-Governor who may be appointed for the Province of Assiniboia should be familiar with both the French and English languages.

18. That the Judge of the Supreme Court speak the English and French languages.

19. That all debts contracted by the Provincial Government of the Territory of the North West, now called Assiniboia, in consequence of the illegal and inconsiderate measures adopted by Canadian officials to bring about the civil war in our midst, be paid out of the Dominion Treasurer; and that none of the members of the Provisional Government, or any of those acting under them, be in any way liable or responsible with regard to the movement or any of the actions which led to the present negotiations.

APPENDIX 3

THE DOMINION LANDS ACTS

There were various Dominion Lands Acts which had specific reference to the Metis. The ones of particular interest to Alberta Metis are:

A. An Act to Amend and Consolidate the Several Acts Respecting the Public Lands of the Dominion.
1879, 42 Victoria, C.31.

GENERAL PROVISIONS

s.125. The following powers are hereby delegated to the Governor in Council:-
e. To satisfy any claims existing in connection with the extinguishment of the Indian title preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions, as may be deemed expedient;

B. An Act to Amend and Consolidate the Several Acts Respecting the Public Lands of the Dominion.
1883, 46 Victoria C.17.

GENERAL PROVISIONS

81. The following powers are hereby delegated to the Governor in Council:-
e. To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, previous to the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions as may be deemed expedient;

83. The Dominion Lands Board, the Commissioner of Dominion Lands, and the Inspector of Dominion Lands Agencies, and any person specially authorized to that effect by the Governor in Council, shall have power to summon, before them or him, any person by subpoena issued by them or him, to examine such person under oath and to compel the production of papers and writings before them or him, and — if any person duly summoned neglects or refuses to appear at the time and place specified in the subpoena upon him legally served, or refuses to give evidence or to produce the papers or writings demanded of him — may, by warrant under their or his hands or hand, cause such person, so neglecting or refusing, to be taken into custody and to be imprisoned in the nearest common gaol, as for contempt of court, for a period not exceeding fourteen days.

APPENDIX 4

UNIVERSAL DECLARATION OF HUMAN RIGHTS

as adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948.

This document states a large number of specific rights. Only those which are particularly relevant to the treatment accorded the Metis people since 1869 are enumerated here.

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by Law.

ARTICLE 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

APPENDIX 5

SCHEDULE "A":

St. Paul des Metis:
List of Half-breed Claims Allowed and Entries Granted.

Beauregard, Charles	patented homestead
Beauregard, Julien	grant
Beauregard, Louis	160-acre homestead
Beauregard, Norbert	160-acre homestead
Berard, Mrs. Eustache	160-acre homestead
Berard, Thomas	80-acre grant
Boudreau, Dieudonne George	160-acre grant
Boudreau, Albert	160-acre homestead
Brady, James P.	80-acre grant
Breland, Zacharie	80-acre patented grant
Bruneau, Louison Sr.	80-acre grant
Bruneau, Louison Jr.	80-acre patented grant
Brunelle, William Sr.	80-acre grant
Calliou, Felix	80-acre grant
Cardinal, Mrs. Gabriel	80-acre grant
Cardinal, William	80-acre grant
Collins, Albert	160-acre homestead
Collins, Samuel	160-acre homestead
Daniels, David	80-acre homestead
Desjarlais (Okanese), Pierre	160-acre homestead
Desjarlais (Sekirac), Simon	160-acre homestead
Dufresne, Henry	160-acre grant
Dumont, Timothy	80-acre grant
Dumont, Peter	80-acre grant
Durocher, Frederick	grant
Flammond, Joseph	80-acre grant
Garneau, Alexander	80-acre grant
Garneau, Edward	80-acre grant
Garneau, John Marie	80-acre grant
Garneau, Laurence Sr.	grant
Garneau, Louis	80-acre grant
Hamelin, Joseph	80-acre grant
Houle, Louison	80-acre grant
Howse, Adam	80-acre grant
Laboucane, Alfred	160-acre patented grant
Laboucane, Diome	80-acre grant

Laboucane, Jean Baptiste	160-acre homestead
Laboucane, St. Pierre	160-acre grant
Laboucane, William John	160-acre homestead
Lacombe, Peter	160-acre grant
Laderoute, Albert	160-acre homestead
Laderoute, Daniel	160-acre homestead
Laderoute, Gabriel	160-acre homestead
Laderoute, Joseph	80-acre grant
Laderoute, Oliver	80-acre grant
Laframboise, Michael	80-acre grant
Laframboise, Louis	80-acre patented grant
Lariviere, John	80-acre grant
Mongrain, Andre	80-acre grant
Mongrain, Michel	80-acre grant
Parenteau, Joseph	160-acre homestead
Poitras, Elzear Sr.	patented grant
Poitras, François Sr.	patented grant
Poitras, François Jr.	160-acre homestead
Poitras, Joseph	160-acre homestead
Poirier, Arthur, C. J.	80-acre grant
Rabascaw, Joseph	80-acre grant
Ridsdale, Thos. S.	grant
Ross, John Jr.	80-acre grant
Ross, Corbett	80-acre grant
Todd,	
Trottier, Corbert	80-acre grant
Vallette, François	160-acre homestead
Ward, Felix	80-acre grant

SCHEDULE C:

St. Paul des Metis: List of Half-breed Claims Disallowed

Breland, Alfred	(son of Zacharie Breland)
Boudreau, Daniel	(Son of François Boudreau)
Boudreau, Joseph	(son of François Boudreau)
Boudreau, William	(son-in-law of Pierre Desjarlais)
Brunelle, William Jr.	(son of William Brunelle Sr.)
Cardinal, Moise	(son-in-law of Joseph Rabascaw)
Collins, (illegible)	

Desjarlais, Gabriel	(son of Simon Desjarlais)
Desjarlais, Baptiste	(son of Pierre Desjarlais)
Dufresne, Joseph	(son of François Dufresne and nephew of Henry Dufresne)
Flammond, Joseph Sr.	(father of Joseph Flammond, Jr.)
Houle, Louis Jr.	(son of Louison Houle)
Laboucane, George	(son of St. Pierre Laboucane)
Laboucane, Jerome	(son of St. Pierre Laboucane)
Poitras, Alfred	
Poitras, Dolphus	
Poitras, François	
Poitras, Theodore	(son of Elzear Poitras Sr.)
Ridsdale, William	
Ross, David	(son of John Ross Jr.)
Ross, John Sr.	(father of Corbett and John Jr.)
Ward, James	(father of Felix Ward)

APPENDIX 6

AN ACT RESPECTING THE METIS POPULATION OF THE PROVINCE

Second Session, C.6, Assented to November 22, 1938

WHEREAS by the report, dated the 15th day of February, 1936, of a commission appointed pursuant to *The Public Inquiries Act*, on the 27th day of February, 1933, certain recommendations were made for the betterment of the general welfare of the metis population of the Province;

And whereas it is convenient and in the public interest that the ways and means of giving effect to such recommendations should be arrived at by means of conferences and negotiations between the Government of the Province and representatives of the metis population of the Province;

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as *"The Metis Population Betterment Act."*

2. In this Act unless the context otherwise requires, —

(a) "Metis" means a person of mixed white and Indian blood but does not include either an Indian or a non-treaty Indian as defined in *The Indian Act,* being chapter 98 of the Revised Statutes of Canada, 1927;

(b) "Minister" means the member of the Executive Council who is for the time being charged by the Lieutenant Governor in Council with the administration of this Act.

3. The Minister is hereby authorized and empowered to do such acts and things as he may consider proper for the purpose of co-operating with the Board of any association formed pursuant to section 4 of this Act formulating one or more schemes for the purpose of bettering the general welfare of the metis population of the Province, and for the settlement of the members of such association on lands set aside for that purpose by the Province.

4. (1) The Minister is hereby authorized and empowered to promote the formation of one association or more composed of members of the metis population of the Province who are unable to secure out of their own resources a reasonable standard of living.

(2) The constitution and by-laws of any such association shall prescribe the qualifications for membership in any such association and the conditions of membership therein, and shall provide that the control of the business and affairs of the association shall be in a Board consisting of not more than five persons and shall make provision for election of the members of the Board and their respective terms of office and the manner in which the activities of the association shall be carried on.

(3) The aims and objects of any such association shall be to co-operate with the Minister in preparing and formulating schemes for the betterment of the members of such association, and for their settlement on lands set aside for that purpose by the Province.

(4) The constitution of any such association shall be subject to the approval of the Minister and when it is so approved, it shall be binding upon all the members thereof.

(5) The Board of any association may alter or amend its constitution only with the approval of the Minister, and any such alteration or amendment shall be of no force or effect until the same is approved by the Minister.

5. Every scheme formulated pursuant to this Act shall be submitted by the Minister to the Lieutenant Governor in Council for approval, and upon the same being so approved, shall be laid upon the table of the Legislative Assembly at the next Session thereof which commences after the expiration of thirty days from the date upon which such scheme is so approved and within ten days after the day upon which Session commences.

6. The Lieutenant Governor in Council may at any time and from time to time by order set aside out of any unoccupied Provincial lands as defined in *The Provincial Lands Act* any area or areas thereof which are deemed to be suitable for the settlement of the members of any association formed pursuant to section 4 and withdraw the same from disposal under *The Provincial Lands Act* until such time as the Lieutenant Governor in Council is satisfied that for any reason whatsoever the lands so set aside and withdrawn from disposal are unsuitable or are not required for the settlement of any members of any such association.

7. Notwithstanding anything contained in *The Game Act, 1932,* or any other Act to the contrary, the Lieutenant Governor in Council may by order prohibit the hunting, trapping, killing or taking of any game bird, fur-bearing animal or fur-producing animal as defined in *The Game Act, 1932,* or any designated kind or description thereof over and upon any land set aside pursuant to section 6, by any person who is not the member of a designated association formed pursuant to this Act, and may make regulations governing the hunting, trapping and killing of any game bird, fur-bearing animal or fur-producing animal or any designated kind or description thereof by any person and prescribing penalties recoverable on summary conviction for the breach of any such regulation not in excess of one hundred dollars and costs.

8. This Act shall come into force on the day upon which it is assented to.

APPENDIX 7

EXCERPTS FROM THE ROYAL PROCLAMATION OF 1763.

(emphasis added)

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, *not having been ceded to or purchased by Us, are reserved to them* or any of them, as their Hunting Grounds — We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, *and until our further Pleasure be Known*, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further delcare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our Said Three New Governments, *or within the Limits of the Territory granted to the Hudson's Bay Company*, as also all the Land and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the End that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and

require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our colonies where, We have thought proper to allow Settlement; but that, *if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians,* to be held for the Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for the Purpose; And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Regard, taking especial care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trail for the same.

Given at our Court at
St. James's the 7th Day
of October 1763, in the
Third Year of our Reign.

GOD SAVE THE KING

APPENDIX 8

GRANDE CACHE — SAMPLE AGREEMENT

Memorandum of Agreement

BETWEEN:

HER MAJESTY THE QUEEN in right of the Province of Alberta, as represented by the Minister of Lands and Forests, (hereinafter referred to as the 'Minister'),

OF THE FIRST PART,

— and —

WANYANDIE CO-OPERATIVE LIMITED of Grande Cache, Alberta, with its Head Office at Grande Cache, Alberta, (hereinafter referred to as the 'Co-operative'),

OF THE SECOND PART.

WHEREAS negotiations for the acquisition of public lands by the Grande Cache area native settlers have taken place; and

WHEREAS the settlers of the Wanyandie area have formed the Co-operative; and

WHEREAS it has been mutually agreed that the Co-operative should be given title to certain tracts of lands, pursuant to section 21 of The Public Lands Act, subject to the provisions hereof;

NOW THEREFORE the parties hereto agree as follows:

1. As a condition precedent to this Agreement the Co-operative shall adopt and register with the Registrar of Companies a By-Law restricting the membership in the Co-operative to the native settlers who settled in the Grande Cache district before the year 1960, their husbands and wives and natural and lawfully adopted children and their descendants; their lawful husbands, wives and natural and lawfully adopted children from generation to generation. The interest of any child shall be held by his/her next-of-kin in trust and shall neither mature nor vest until such child attains the age of majority.

2. The By-Law referred to in paragraph 1 shall remain in force and effect permanently, being a condition which must be fulfilled to entitle the Co-operative to continue to hold title to the lands after acquiring the said title.

3. The lands referred to herein when surveyed will be approximately the lands colored yellow in the sketch map marked "Appendix A", (all being in Township 58, Ranges 7 and 8, and Township 59, Ranges 6 and 7, West of the 6th Meridian) subject to all existing lesser interests therein, reserving thereout all mines, minerals, and excepting thereout all surveyed roadways and right-of-ways.

4. After completion of the land survey the Minister will cause to be issued a title in the name of the Co-operative, as aforesaid, and further subject to the Minister's Caveat protecting the Minister's interest provided for by this Agreement.

5. It is mutually agreed that the Co-operative shall have no right to convey to anyone any interest in any of the said lands without first obtaining an Order of the Lieutenant Governor in Council authorizing the proposed conveyance, but this provision shall not preclude the Co-operative from making any special arrangements as to the use of the lands by the members of the Co-operative.

6. In the event that the Co-operative desires to sell any of the said lands, the Province of Alberta shall have the first option to purchase the lands being offered for sale, the price to be mutually agreed upon, failing which each party shall appoint an arbitrator who in turn shall select a third arbitrator to form an arbitration committee for the purpose of determining a fair market price. The said arbitration shall be governed by the provisions of The Arbitration Act.

7. The Minister will arrange with the municipal taxation authority to exempt the Co-operative from its tax levies for a period of five years after which time the Minister may in his discretion recommend an extension fo the tax exemption for a period not exceeding five years.

8. During the first two years of this Agreement the Minister will at the request of the Co-operative supply to it posts, barbed wire and staples (free of charge) for the purpose of the Co-operative erecting fences along any of the surveyed boundaries of the said lands but the Minister may limit the amount of any fence material supplied at any one time until he is satisfied that the material supplied has been or is being used for the specified purpose. No fence erected may have more than four strands of wire.

9. In the event that the Co-operative ceases to exist or is dissolved for failure of descendents the said lands shall revert to Her Majesty the Queen in right of the Province of Alberta who hereby undertakes to hold the said lands in trust for the use and benefit of the surviving native settlers and the descendents of the native settlers who were given land in the Grande Cache district under Agrements between their legal associations and Her Majesty the Queen in right of the Province of Alberta, which Agreements were executed contemporaneously hereto.

10. It is hereby mutually agreed and understood that the lands given under this Agreement are accepted by the Co-operative, and the individual members thereof, in full and final settlement of all their land claims against Her Majesty the Queen in right of the province of Alberta.

11. The covenants and agreements herein contained shall be binding upon and apply and enure to the benefit of the heirs, executors, administrators and successors of the parties hereto respectively.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals on the *28th* day of May, A.D. 1973.

V. A. Wood for
MINISTER OF LANDS AND FORESTS

WANYANDIE CO-OPERATIVE LIMITED

Kelly Joachim
PRESIDENT

Tom Wanyandie
SECRETARY

A45812

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